

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: Nyasha Smith, Secretary of the Council
FROM: Charles Allen, Chairperson, Committee on the Judiciary and Public Safety
RE: Closing Hearing Record
DATE: April 9, 2018

2018 APR -9 AM 10:31
OFFICE OF THE
SECRETARY
CA

Dear Ms. Smith,

Please find attached copies of the Hearing Notice, Agenda and Witness List, and testimony for the Committee on the Judiciary and Public Safety's March 22, 2018, public hearing on B22-0193, the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017"; B22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017"; B22-0588, the "Possession of Firearm and Ammunition Penalties Amendment Act of 2017"; PR22-0552, the "Sense of the Council in Opposition to Concealed Carry Reciprocity Resolution of 2017"; and PR22-0796, the "Sense of the Council Virginia and Maryland Assault Rifle Prohibition Resolution of 2018".

The following witnesses testified at the hearing or submitted written testimony to the Committee:

i. Public Witnesses

1. Mykalani Sayavongsa-Vaughn, Student, Capitol Hill Montessori at Logan
2. Juanzel Staton, Student, Capitol Hill Montessori at Logan
3. Sadia Williams, Student, Capitol Hill Montessori at Logan
4. Markale McLean, Student, Capitol Hill Montessori at Logan
5. Aaliyah Bunn, Student, Capitol Hill Montessori at Logan
6. Dr. Joanna Cohen, Member, American Academy of Pediatrics
7. Christian Heyne, Legislative Director, Coalition to Stop Gun Violence
8. Yasmin Fletcher, Staff Attorney, Coalition to Stop Gun Violence
9. Maddie Salunga, Student, Stuart Hobson Middle School
10. Elizabeth Ken, Student, Stuart Hobson Middle School
11. Sanaa Stephen, Student, Stuart Hobson Middle School
12. Josephine Guire, Student, Stuart Hobson Middle School
13. Henry Marks, Student, Stuart Hobson Middle School
14. Dakota Jablon, Policy Analyst, Coalition to Stop Gun Violence
15. Luis Melero, Policy Manager, Brady Campaign to Prevent Gun Violence
16. Lindsey Nichols, Federal Policy Director, Giffords Law Center to Prevent Gun Violence

17. Betty Luther, Student, Eastern Senior High School
18. Rikiya Strickland, Student, Eastern Senior High School
19. Kemi Aboagye, Student, Eastern Senior High School
20. Wemi Peters, Senior Staff Attorney, Legal Aid Society of the District of Columbia
21. Rachel Usdan, Volunteer, DC Chapter, Moms Demand Action for Gun Sense in America
22. Laura Morris, Member, DC Chapter, Moms Demand Action for Gun Sense in America
23. Tory Brangham, Volunteer, DC Chapter, Moms Demand Action for Gun Sense in America
24. Daniel Landsman, Policy Associate, Families Against Mandatory Minimums
25. Gretta Gardner, Deputy Director, DC Coalition Against Domestic Violence
26. Carolyn Hoffman, Supportive Advocacy Services Team Coordinator, DC SAFE
27. Naida Henao, Strategic Advocacy Counsel, Network for Victim Recovery of DC
28. Peter Gehred, Founder, Wikipolicy
29. Walter Smith, Executive Director, DC Appleseed Center for Law and Justice
30. Tiffany Wright, Senior Associate, WilmerHale/Pro Bono Counsel, DC Appleseed
31. George Lyon, Jr., Spokesperson, The Second Amendment Institute/Arsenal Attorneys
32. David Cagua, Representative, Black Gun Owners Association
33. Leon Spears, Owner, dcConcealedCarry.com
34. Laurice Djepeno, Student, Hugh M. Browne Education Campus
35. Kiarra Allen, Student, Hugh M. Browne Education Campus
36. Jasmine Avery, Student, DC International School
37. Heaven Ford, Student, DC International School
38. Tenia Philson, Student, DC International School
39. Alan Perkins, Public Witness
40. Dawn, Public Witness
41. Unnamed Eliot-Hine Middle School Students
42. Shaun Gonzales, Public Witness
43. Ricardo Royal, National President & Chief Training Counselor, Community Association for Firearms Education
44. Anthony Butler, President, DC Chapter, Community Association for Firearms Education

45. Brian Wrenn, Public Witness
46. Valerie Graff, Interim Executive Director, My Sister's Place
47. Central Committee, National Black United Front
48. Melissa Irby, Public Witness
49. Joan Meier, Legal Director, DC LEAP

ii. Government Witnesses

1. Kevin Donahue, Deputy Mayor for Public Safety & Justice/Deputy City Administrator
2. Peter Newsham, Chief of Police, Metropolitan Police Department
3. Loren AliKhan, Solicitor General, Office of the Attorney General for the District of Columbia
4. Katya Semyonova, Policy Counsel, Public Defender Service for the District of Columbia

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

**BILL 22-0193, THE "TEMPORARY PROTECTION ORDER FIREARM
RELINQUISHMENT AMENDMENT ACT OF 2017"**

**BILL 22-0400, THE "EXTREME RISK CIVIL PROTECTION ORDER
AMENDMENT ACT OF 2017"**

**BILL 22-0588, THE "POSSESSION OF FIREARM AND AMMUNITION PENALTIES
AMENDMENT ACT OF 2017"**

AND

**PROPOSED RESOLUTION 22-0552, THE "SENSE OF THE COUNCIL IN OPPOSITION
TO CONCEALED CARRY RECIPROCITY RESOLUTION OF 2017"**

**Thursday, March 22, 2018, 10:30 a.m.
Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Thursday, March 22, 2018, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0193, the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017"; Bill 22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017"; Bill 22-0588, the "Possession of Firearm and Ammunition Penalties Amendment Act of 2017"; and Proposed Resolution 22-0552, the "Sense of the Council in Opposition to Concealed Carry Reciprocity Resolution of 2017". The hearing will take place in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 10:30 a.m.

The stated purpose of Bill 22-0193, the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017", is to amend Title 16 of the District of Columbia Official Code to require

an individual subject to a temporary protection order to relinquish the individual's firearms; and to amend An Act To control the possession, sale, transfer and use of pistols and other dangerous weapons in the District of Columbia to provide penalties, to prescribe rules of evidence, and for other purposes to provide that an individual may not own or keep a firearm in the individual's possession or under the individual's control if the individual is subject to a court order requiring the individual to relinquish possession of any firearms.

The stated purpose of Bill 22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017", is to authorize a court to issue a temporary ex parte extreme risk civil protection order if there is a finding that there is a reasonable belief to find that the subject of the petition poses an immediate and present danger of causing personal injury to self or others by possession or control of a firearm, and to establish an extreme risk civil protection order for the duration of one year to remove firearms when a court finds by a preponderance of evidence that the subject of the petition poses a significant threat of harm to self or others.

The stated purpose of B22-0588, the "Possession of Firearm and Ammunition Penalties Amendment Act of 2017", is to prohibit a person from knowingly possessing or receiving any firearm with a tampered serial number; to prohibit a person from possessing a stolen firearm or stolen ammunition; to prohibit the possession of ammunition by individuals previously convicted of felonies; to increase the penalty for possession of a high-capacity magazine; to prohibit trafficking firearms or ammunition; and to permit persons to surrender to the Metropolitan Police Department firearms or ammunition that this act prohibits.

The stated purpose of PR22-0552, the "Sense of the Council in Opposition to Concealed Carry Reciprocity Resolution of 2017", is to declare the Sense of the Council in opposition to congressional action that would make the District of Columbia less safe by imposing concealed carry reciprocity, which allows individuals who are licensed to carry a concealed firearm in any state to carry their firearms in the District of Columbia.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at judiciary@dccouncil.us or at (202) 727-8078, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, March 19, 2018**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty double-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. **The record will close at the end of the business day on April 6, 2018.**

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REVISED AND ABBREVIATED NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

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**PROPOSED RESOLUTION 22-0796, THE "SENSE OF THE COUNCIL VIRGINIA AND
MARYLAND ASSAULT RIFLE PROHIBITION RESOLUTION OF 2018"**

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1350 Pennsylvania Avenue, N.W., at 10:30 a.m. *Please note that this notice has been revised to reflect the inclusion of PR22-0796.*

The stated purpose of Bill 22-0193, the “Temporary Protection Order Firearm Relinquishment Amendment Act of 2017”, is to amend Title 16 of the District of Columbia Official Code to require an individual subject to a temporary protection order to relinquish the individual’s firearms; and to amend An Act To control the possession, sale, transfer and use of pistols and other dangerous weapons in the District of Columbia to provide penalties, to prescribe rules of evidence, and for other purposes to provide that an individual may not own or keep a firearm in the individual’s possession or under the individual’s control if the individual is subject to a court order requiring the individual to relinquish possession of any firearms.

The stated purpose of Bill 22-0400, the “Extreme Risk Civil Protection Order Amendment Act of 2017”, is to authorize a court to issue a temporary ex parte extreme risk civil protection order if there is a finding that there is a reasonable belief to find that the subject of the petition poses an immediate and present danger of causing personal injury to self or others by possession or control of a firearm, and to establish an extreme risk civil protection order for the duration of one year to remove firearms when a court finds by a preponderance of evidence that the subject of the petition poses a significant threat of harm to self or others.

The stated purpose of B22-0588, the “Possession of Firearm and Ammunition Penalties Amendment Act of 2017”, is to prohibit a person from knowingly possessing or receiving any firearm with a tampered serial number; to prohibit a person from possessing a stolen firearm or stolen ammunition; to prohibit the possession of ammunition by individuals previously convicted of felonies; to increase the penalty for possession of a high-capacity magazine; to prohibit trafficking firearms or ammunition; and to permit persons to surrender to the Metropolitan Police Department firearms or ammunition that this act prohibits.

The stated purpose of PR22-0552, the “Sense of the Council in Opposition to Concealed Carry Reciprocity Resolution of 2017”, is to declare the Sense of the Council in opposition to congressional action that would make the District of Columbia less safe by imposing concealed carry reciprocity, which allows individuals who are licensed to carry a concealed firearm in any state to carry their firearms in the District of Columbia.

The stated purpose of PR22-0796, the “Sense of the Council Virginia and Maryland Assault Rifle Prohibition Resolution of 2018”, is to declare the Sense of the Council in support of calling on the Virginia and Maryland legislatures to ban assault rifles in order to prevent such weapons from being brought into the District of Columbia.

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AGENDA & WITNESS LIST
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

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- I. CALL TO ORDER**
- II. OPENING REMARKS**
- III. WITNESS TESTIMONY**

i. Public Witnesses

1. Emeric Sery, Student, Capitol Hill Montessori at Logan
2. Mykalani Sayavongsa-Vaughn, Student, Capitol Hill Montessori at Logan
3. Juanzel Staton, Student, Capitol Hill Montessori at Logan
4. Sadia Williams, Student, Capitol Hill Montessori at Logan
5. Markale McLean, Student, Capitol Hill Montessori at Logan
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2. Peter Newsham, Chief of Police, Metropolitan Police Department
3. Loren AliKhan, Solicitor General, Office of the Attorney General for the District of Columbia
4. Katya Semyonova, Policy Counsel, Public Defender Service for the District of Columbia

Testimony of Mykalani Sayavongsa-Vaughn
7th Grade Student at Capitol Hill Montessori at Logan
DCPS Oversight Hearing in the Committee on Education
March 22, 2018

Thank you for the opportunity to testify. I am Mykalani Sayavongsa-Vaughn and I'm a 7th grade student at Capitol Hill Montessori at Logan. I am a current resident of ward 7.

I support the gun bills that are being discussed today but they are not enough. While we have seen mass school shootings, I personally have never been in one. I'm terrified because at any time and any moment I could be at school receiving my education and there could be an active shooter.

A poll was taken in late 2013 and 40% of people said that easier access to guns is the second biggest reasons of America's mass shootings. 48% of people believed the shootings were because of individuals with mental illnesses.

How Much Various Factors Are to Blame for Mass Shootings in the United States

Thinking about mass shootings that have occurred in the United States in recent years, from what you know or have read, how much do you think each of the following factors is to blame for the shootings -- a great deal, a fair amount, not much, or not at all?

% A GREAT DEAL TO BLAME	Jan 14-16, 2011	Sep 17-18, 2013	Change
	%	%	pct pts.
Failure of the mental health system to identify individuals who are a danger to others	48	48	0
Easy access to guns	46	40	-6
Drug use	42	37	-5
Violence in movies, video games, music lyrics	31	32	+1
Spread of extremist viewpoints on the Internet	32	29	-3
Insufficient security at public buildings including businesses and schools	n/a	29	n/a
Inflammatory language from prominent political commentators	19	18	-1

GALLUP

I think that before being allowed to purchase a gun or have a job dealing with a gun or weapon, every individual should get a test for mental illness and also a deeper background check. If they find that the individual have any type of problem, they are allowed to refuse your purchase of guns and weapons.

I agree with the red flag law, but I don't think that it's enough because it is not enough time in one year to address their problems. After a year, people can just say that they are fine, they possibly could be lying and say that just to have a opportunity stir up even more trouble. We don't want any more people to possibly lose their lives. After the first year, they should have to participate in home visits that can prove that they are are stabilized and get therapy before guns can be put in their hands. People need a break down to build back up with programs that will help people when they have been through drug abuse or violence.

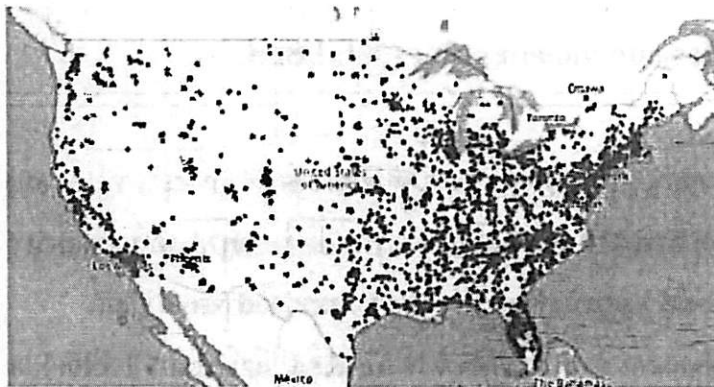
I also believe that to purchase a firearm you must be able to prove that you can safely secure your guns and weapons. When a gun is left unsecured in the home it's too easy for a child to hurt themselves, someone else or possibly bring it to school. According to Everytown for gun safety researchers, about 65% of unintentional child shootings take place in the home where guns are not secured safely. many tragedies can be avoided if people could keep their guns stored locked and unloaded.

Thank you for the opportunity to testify

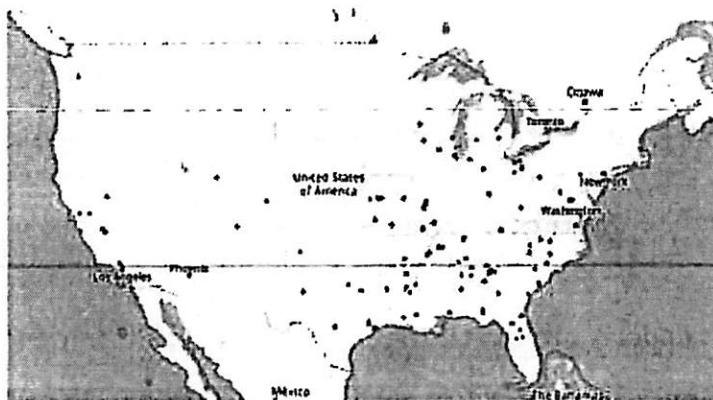
Testimony of Juanzel Staton
Student at Capitol Hill Montessori at Logan School
Judiciary and Public Safety Committee
of the DC Council
March 22, 2018

Thank you for the opportunity to testify. I am Juanzel Staton and I am a 7th grade student at Capitol Hill Montessori at Logan. I live in Ward 7. Today I'll be talking about how to keep our schools and communities safe.

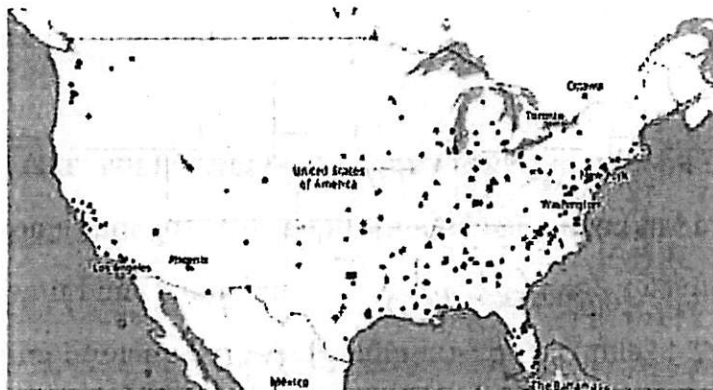
I think you should do all you can to support making tougher gun laws. I'm particularly interested in keeping schools safe because too many people are already losing their lives to gun violence in the community and now they are bringing gun violence to school. For example, I lost my uncle to gun violence, two female college students in my neighborhood became victims of gun violence, and now again kids in school have become victims to gun violence. I'm worried because my school is near the US Capital of the United States and could be an easy target. Also, if there are guns in my community, guns can be easily brought into school.



Number of Incidents



Number of Children



Number of Teens

In just these few months of 2018 according to the Gun Violence Archive data, a total of 11,817 incidents have happened and the results have included 3,047 deaths, 5,289 injuries; 140 children ages birth to 11 were injured or killed, 580 teens 12-17 were or injured or killed, and 48 Mass shootings just to mention a few breakdowns of the data. In DC in 2018, we already have 25 homicides and violent crimes total 828.

DC is not doing enough to keep our schools safe. First, we should invest more in security guards. In our school, we have only one security guard for two buildings and approximately four hundred kids. This particularly worries me because our school is located less than 1 block away from the U.S Securities and Exchange Commission, less than a block away

from Union Station, and less than 10 minutes away from the U.S Capitol. this being a high terrorist area Because those buildings are could be targets for terrorism, I believe that we should at least have 3 security guards in our school. In just this week a security guard was added in our middle school building. In addition, I think we should get metal detectors for both buildings in my school. I go to school to learn and it's really hard to focus on learning if I don't feel safe.

Thank you for the opportunity to testify.

Testimony of Sadia Williams
8th Grade Student at Capitol Hill Montessori at Logan
Judiciary and Public Safety Committee Hearing
March 22, 2018

Thank you for the opportunity to testify! I am Sadia Williams and I am an 8th grade student at Capitol Hill Montessori at Logan. I live in Ward 8.

I would like to testify on how we need gun control because there are too many innocent people being hurt or killed by gun violence. I present you with two examples.

According to NBC, 9-Year-Old Jaydan Stancil was shot on a Playground in Mayfair Mansions apartments on October 3rd, 2014. The gunfire was NOT intended for Jaydan. A DC officer rushed Jaydan to Children's Hospital. Jaydan was shot in the head. The bullet went through the bone, to the brain. The doctors told Jaydan's mom that he wouldn't make it and that he had 35-40 minutes to live. Then a miracle happened! Jaydan made it and is alive to this day!

Another example is 68-Year-Old Vivian Marrow who was shot and killed in her wheelchair January 16, 2017, on Elvans Road. I have seen Ms. Marrow first-hand strolling the neighborhood, as I visited my grandmother who lives in a nearby townhome community. She'd stroll the hill in her shades and her smile. She too, like Jaydan, was innocent.

"I don't get how the young boys get involved in this war... and kill someone innocent like her", says Vivian Marrow's grieving son.

According to DC MPD, as of March 19, 2018, there have been 24 homicides from firearms. This is equivalent to 2 homicides per week. And it's only March!

No child should be scared to walk the streets of their own neighborhood, wondering if they will return home safely. It is sad that so many people who have done nothing wrong have to lose their lives

because of someone trying to show how “rough” they are. This puts too many lives at risk.

In closing, we have gathered at this public hearing to discuss the bills affecting the gun rights of District citizens. The instances that I shared could have possibly been prevented if we set stern gun laws such as bill #22-0400 AKA, a RED FLAG LAW. This law allows families to petition the court to have guns removed from a person for one year if there is concern of self-harm or danger to others.

Even still, and I quote “There is NO flag large enough to cover the shame of killing INNOCENT people.” Thank you!

**Testimony of Markale McLean
8th Student at Capitol Hill Montessori at Logan
To the Judiciary and Public Safety Committee
of the DC Council
March 22, 2018**

Thank you for the opportunity to testify. My name is Markale McLean. I am 13 years old. I am a current resident of Ward 8. I came here to talk about the school shooting in Florida and about how arming teachers with firearms is the wrong solution.

The first thing that I am going to talk about is the school shooting in Florida. The first thing I noticed when I did my research for this topic was that the shooter was age 17. What struck me the most was that he killed 17 students and brushed it off like it was nothing. I was just shocked because I felt really really bad for the kids whose lives were lost that day. They were innocent children and teenagers and people were taking bullets for other people so that they could survive. That reminded me not to be selfish because I would do anything for the people that I am about and the people that I love.

The next thing I want to talk about is arming teachers with guns. The thing that stood out the most to me was policies suggesting that "Teachers can prevent a school shooting by arming them with guns". The reason why it stood out to me is because students will always be wary about there being a gun near them. For the most part that might scare the students or keep them in a constant panic. And there is always the one the case that there is a school shooting and the teacher and the school shooter might get into a shootout There is always a chance the shooter and the teacher might harm a student or themselves. That might cause even more harm to them and the students in that room or facility. And, I believe many families will stop sending their children to any school with armed staff members.

According to Everytown for Gun Safety, "in 160 active shooting there was only one successful armed civilian intervention" and that was by a highly trained Marine. They also found that "armed civilians have put law enforcement in danger, delayed law enforcement response and posed a risk to innocent bystanders."

After what I heard in Florida I could not sleep easy and I could not look at my school the same way and that's the impact of guns. Guns strike fear into the eyes of students and people and homes. While most people think a gun is just for safety

and only adults can have them, people will always try to get what they want through any means necessary whether it's illegal or stealing people will do anything to get what they want.

Just remember this: I agree with Everytown For Gun Safety, "Guns have no place in our schools. Period."

Thank you

Testimony of Aaliyah Bunn
8th Grade Student at Capitol Hill Montessori at Logan
Committee on the Judiciary and Public Safety of the Council of the District of Columbia
March 22 ,2018

Thank you for the opportunity to testify. I am Aaliyah Bunn and I am an 8th grade student at Capitol Hill Montessori at Logan. I am a current resident of Ward 7.

Tragic shootings are taking place across our country, including our home of Washington D.C. The recent Stoneman Douglas High School Shooting which claimed 17 lives has taken a toll on lives across the world. As a current middle school student, I believe that guns should be "controlled" not released and I am here to tell you that I support all laws that remove guns from our community.

Firearms are not a toy and should not be in the hands of any minor. 16-year-old Taiyania Thompson was shot in the head by Dekale Bowman (18 years old), her boyfriend at the time. Bowman claimed that they were both playing with their "dogs" when Taiyania supposedly pointed her gun at Bowman and in the matter of "playing around" Bowman pointed his gun at her head for "pictures on social media" and "pow it just went off". On January 14 ,2018, The community lost 14-year-old Steven Slaughter; Steven was shot and killed by a gunshot to the head. Steven was simply in the wrong place at the wrong time. Steven was walking home from a 7-Eleven with a friend back to his house when the two of them heard gunshots that sent the both of them running trying to dodge the gunshots Steven dropped his phone; as he turned around to grab it he was shot in the head. Steven and Taiyania's lives were just beginning. They did not deserve to die to the hands of a gun.

All of these things make me feel unsafe going into certain communities. I do not believe any child should be scared to walk the streets of their own neighborhood or going to school to rightfully receive their education without wondering what will happen to them or whether they will return home safe. It also makes me sad that so many people who have done nothing wrong have to lose their life because of someone trying to show how tough they are or they are going through their own things at home and take their anger out with violence. There are 693,972 lives at your hands including mine and the other peoples in this room today.

I would like DC to pass the "Red Flag Laws" because this law can give school teachers, students, parents and people in the community the opportunity to say that

“something is not right” with the way the person is responding to certain situations. In addition to the “Red Flag Law,” I believe that anyone who plans on purchasing a firearm of any kind should have a full Mental Health Evaluation before being allowed to have possession of any firearm.

As of March 20, 2018

The statistics below reflect the data entered into MPD's records management system (Cobalt) as of 12 am on the date above. The homicide numbers are based on numbers submitted by the Homicide Branch.

Offense	2017	2018	Percent Change
Homicide	23	25	9%
Sex Abuse	57	62	9%
Assault w/ a Dangerous Weapon	407	330	-19%
Robbery	450	411	-9%
Violent Crime-Total	937	828	-12%
Burglary	328	297	-9%
Motor Vehicle Theft	442	461	4%
Theft from Auto	2,203	2,059	-7%
Theft (Other)	2,895	2,589	-11%
Arson	1	1	0%
Property Crime-Total	5,869	5,407	-8%
All Crime-Total	6,806	6,235	-8%

2017 Year End Crime Data*

Year-end 2017 data accurate as of January 2, 2018.

Offense	2016	2017	Percent Change
Homicide	135	116	-14%
Sex Abuse	347	296	-15%
Assault w/ a Dangerous Weapon	2,277	1,858	-18%
Robbery	2,983	2,183	-27%
Violent Crime-Total	5,742	4,459	-22%
Burglary	2,126	1,526	-28%
Motor Vehicle Theft	2,700	2,425	-10%
Theft from Auto	12,178	10,288	-16%
Theft (Other)	14,570	14,510	-0%
Arson	6	4	-33%
Property Crime-Total	31,580	28,763	-9%
All Crime-Total	37,322	33,206	-11%

I would like DC to get back on track and reduce the numbers of homicide in the coming years.

Thank you for the opportunity to testify.

District of Columbia Chapter

American Academy of Pediatrics



**Council of the District of Columbia
The Committee on the Judiciary & Public Safety**

Thursday, March 22, 2018

Testimony of

Joanna Cohen MD, FAAP, RDMS

American Academy of Pediatrics, District of Columbia Chapter

Good Morning, my name is Dr. Joanna Cohen. I am a pediatric emergency medicine physician at Children's National Health System. I am also a long time DC resident and mother of three. I am here today representing the District of Columbia Chapter of the American Academy of Pediatrics, or DC AAP. DC AAP is the Washington, DC chapter of the national organization of 66,000 pediatricians. The DC chapter has over 450 members, including pediatricians, pediatric subspecialists, residents and medical students from all of the District's hospitals, community clinics and school based health centers.

Thank you for this opportunity to speak in support of the legislation being discussed today.

Every year my colleagues in the emergency department and I see children who are victims of firearm injuries- both intentional and accidental. The most common victims of gun violence we see are the children suffering from accidental injuries. The effects are acute but also often long-lasting. I remember a 19-year-old boy who sustained life-altering injuries during a drive-by shooting when he was playing in the park as a toddler. He is now wheelchair bound, dependent on a tube for feeding and another tube in his trachea to breathe. His mother was unable to care for a medically complex child, and so he now lives in a group home. He is brought to the hospital for complications related to his immobility, his feeding tube, and his breathing support. Previously a healthy child, he never got to join a sports team, learn an instrument, or attend his high school prom. Although he is not counted among the many firearm mortalities, he was robbed of his childhood by gun violence.

As emergency physicians, we treat children who have been injured by firearms, but the injuries are not limited to the wounds inflicted by the bullets. While physical injuries are relatively easy to treat, the emotional health problems of children exposed to gun violence are much more difficult to address. Children exposed to gun violence have higher rates of depression and anxiety. Childhood exposure to gun violence has been linked to poor relationships and school performance, risky health behavior and chronic health conditions. The effects of adverse childhood events adversely impact development and lifelong potential. This creates long lasting problems for not only the child, but also the family and community.

Nationally, firearm-related injuries are a leading cause of unintentional injury deaths in children and adolescents. In 2016, the firearm mortality rate in DC for persons 21 and under was 13.5%, compared to 5.4% for the United States as a whole. Younger children are more likely to be victims of unintentional injuries from firearms, the majority of which occur in the home. Adolescents are more likely to suffer from intentional injuries due to either assault or suicide attempts with a firearm. Adolescents with risk factors for suicide are just as likely to report in-home firearm access as those without such risk factors. Suicidal children and adolescents in homes with firearms are not safe. For these reasons, we support the "Extreme Risk Civil Protection Order Amendment Act of 2017".

Reduced household gun ownership levels will reduce the numbers of suicides, homicides, and accidental gun deaths in children. The American Academy of Pediatrics supports the advancement of "meaningful legislation that keeps children safe." We support gun laws that protect children, including solutions addressing firearm trafficking. We believe "The Possession of Firearm and Ammunition Penalties Amendment Act of 2017" and "The Temporary Protection Order Firearm Relinquishment Amendment Act of 2017" will reduce firearm trafficking, a top priority of the AAP's gun violence prevention strategy.

The AAP also opposes any legislation meant to weaken gun laws, including concealed carry reciprocity which makes it easier to carry locked, loaded, and hidden firearms in public. Forcing DC to accept concealed carry permits from other states undermines the laws of DC and puts the district's children at risk.

I hope as you go forward today, you remember the impact of your deliberations on the children playing in the schoolyards around our city.

Thank you for your time and this opportunity to speak on this important legislation.

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Coalition to Stop Gun Violence
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Testimony of Yasmin Fletcher, Staff Attorney
Coalition to Stop Gun Violence

In response to Bill 22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017," and Bill 22-0193, the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017," Before the Council of the District of Columbia Judiciary & Public Safety Committee
Thursday, March 22, 2018 at 11:00 AM

Chairman Allen,

As the Staff Attorney for the Coalition to Stop Gun Violence, I am writing today in support of the District of Columbia's efforts to pass an Extreme Risk Law, **B22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017,"** and to require the removal of firearms from persons subject to Temporary Protection Orders, **B22-0193, the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017."** I am also writing to address potential due process concerns both bills may prompt.

B22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017," offers persons an opportunity to petition for an ex parte Extreme Risk Civil Protection Order, which would require the respondent to surrender their firearm(s) when an ex parte order is issued, prior to notice and a hearing. **B22-0193, the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017,"** amends the Temporary Protection Order process--a Temporary Protection Order is issued prior to notice and a hearing --to require respondents to "relinquish possession of any firearms." Deprivation of property, prior to notice and a hearing, elicits due process concerns.

Case law, however, tells us that a person's right to due process is not violated when an ex parte order, like an ex parte Extreme Risk Civil Protection Order or a Temporary Protection Order, is issued if four procedural safeguards are satisfied¹: 1) participation by a judicial officer; 2) verified petitions or affidavits containing detailed allegations before the ex parte order is issued; 3) a prompt post-deprivation hearing; and 4) an allegation of risk of imminent and irreparable harm based on personal knowledge of the subject of the order.

¹ *Blazel v. Bradley*, 698 F.Supp. 756, 757 (W.D. Wis. 1988) (holding that a Wisconsin statute "provides the essential due process protections that are required before the state may constitutionally deprive plaintiffs of the protected . . . property interest at stake when a temporary restraining order is issued in a domestic abuse action."). *Blazel* identifies and applies four factors established by the Supreme Court of the United States. *Id* at 765-64.

B22-0400, the “Extreme Risk Civil Protection Order Amendment Act of 2017”

1. Participation by a judicial officer. Bill 22-0400 would require a court to “examine under oath the petitioner and any witnesses” prior to issuing an ex parte order.²
2. Verified petitions or affidavits containing detailed allegations before the ex parte order is issued. Bill 22-0400 would require petitioners to submit a petition containing detailed allegations to the court in order to begin the process for issuing an ex parte order.³
3. A prompt post-deprivation hearing. Bill 22-0400 would require a hearing “within 14 days of the issuance of an ex parte” order.⁴
4. An allegation of risk of imminent and irreparable harm based on personal knowledge of the subject of the order. Bill 22-0400 would require a petitioner to provide “detailed allegations based on personal knowledge that the respondent poses an immediate and present danger of causing personal injury to self or others”⁵

B22-0193, the “Temporary Protection Order Firearm Relinquishment Amendment Act of 2017”

1. Participation by a judicial officer. D.C. law requires a petitioner to file a petition with the court for a civil protection order and requires a finding by a judicial officer.⁶
2. Verified petitions or affidavits containing detailed allegations before the ex parte order is issued. D.C. law requires a petitioner to file a petition under oath for a civil protection order.⁷
3. A prompt post-deprivation hearing. D.C. law requires an initial temporary protection order hearing to be held within 14 days.⁸ A hearing may only be extended if the court has the consent of both parties.⁹
4. An allegation of risk of imminent and irreparable harm based on personal knowledge of the subject of the order. D.C. law requires the court to find, based on the petition, that the “welfare of the petitioner or a household member is immediately endangered by the respondent”¹⁰

² § 905a(d)(1). “In lieu of examining the petition and any witness the petition may produce, the court may require the petitioner and any witness to submit a written affidavit signed under oath” before an ex parte order is issued. § 905a(d)(2).

³ § 905a(a). *See also supra* note 2.

⁴ § 905a(h). California’s Extreme Risk Law, in effect since January 1, 2016, requires a hearing within 21 days; to date it has not been challenged.

⁵ § 905a(a).

⁶ D.C. Code § 16-1004(a) and (b)(1).

⁷ *Id.*

⁸ D.C. Code § 16-1004(b)(2). *See also supra* note 4.

⁹ *Id.*

¹⁰ D.C. Code § 16-1004 (b)(1).

Bill 22-0193, the “Temporary Protection Order Firearm Relinquishment Amendment Act of 2017,” and Bill 22-0400, the “Extreme Risk Civil Protection Order Amendment Act of 2017,” satisfy the four procedural safeguards, thus satisfying the respondent’s right to due process.

Sincerely,

Yasmin Fletcher

Staff Attorney

Coalition to Stop Gun Violence

Good morning. My name is Maddie Salunga. I'm 13 years old and in the seventh grade at Stuart-Hobson Middle School. Thank you for taking the time to listen to me and my peers.

On March 14th, National Walkout Day, Elizabeth Ken, Callista Trevino, and I organized a small student march from our school to the Capitol to draw attention to the issue of gun violence in light of the Parkland shooting. The march was a great success with around 80 students who attended. We held student-made signs, and wore student-made buttons, singing along the way to the capitol. We strongly believe that gun violence is an important issue, and strong laws need to be made and enforced for gun control—not just in DC, but nationwide.

It has come to our attention that there is a bill on the table that would eliminate most DC gun laws. This is truly shocking, especially given the recent Parkland school shooting. This even more disturbing when one considers that the bill would allow people to bring guns into DCPS schools. According to Time Magazine, since 2013, there have been 239 school shootings—which makes the Rubio-Garrett bill even more outrageous.

If this bill is passed there is no way schools will be safer. If people are allowed to bring guns from any state, regardless of how strict their laws are, into DC schools, schools will not be safer. The bill is questionable on a variety of levels, but especially due to the fact that there seems to be no real reason for the bill in the first place. For what legitimate purpose would anyone need an assault weapon on the streets of America? There isn't one. Weapons of war have no place in the hands of civilians, whatsoever. Furthermore, people under 21, who would be able to purchase assault weapons if this bill is passed, should never be permitted to buy such weapons. Proof of this, as mentioned before, is the Parkland shooting. The shooter was 19 years old, and used an AR-15, which, if the Rubio-Garrett bill was passed, would be easily accessible.

What possible sense does it make to make it easier for people to access the very type of weapon that has been used to slaughter children at schools, worshippers at church, and movie and concert-goers? It doesn't. It is utterly mind-blowing that anyone of good conscience who claims to care about the safety and well-being of human beings, especially children, would propose or vote for a bill that allows assault weapons on our streets and guns in our schools.

This bill's passing would inevitably ensure that the rate of school shootings only goes up. On average, ten students every year are slain in school shootings. Some may think that ten is a small number. Now, think of ten friends and family members. Now think of them dying, all at once. That's ten lives. That's ten lives lost to guns. That's ten lives that never had the opportunity to grow, thrive, and change our world for the better, simply because bills like those proposed by Rubio and Garrett are even an option. Ten lives, lost to guns, guns that have made their way, however easily, into schools

Now I ask you, what could possibly be worth ten lives? What could possibly be worth passing a bill that will, not could, will, cost ten lives. And that's just on average. Since Sandy Hook, 438 people have been shot in school shootings. Out of that 438, 138, were killed. 438. That's a lot larger than ten. 438 lives that we'll never get back. But we can keep the number from increasing. We must create stricter laws towards gun control, stricter background checks for purchasing guns, and overall, make it more difficult to purchase firearms.

In closing, the Rubio-Garrett bill should not be passed due to the fact that it would only contribute to a larger problem, rather than create any logical solution.

Gun Violence Testimony

Hello. My name is Elizabeth Ken, and I attend Stuart Hobson Middle School. Today, I came to protest the bill Senator Rubio is trying to pass. This bill would make it legal for people without of state licenses to carry guns in DC schools. The bill would also, essentially, ban DC from being able to make gun laws in the future. DC would eventually become a crisis zone, where kids are to afraid to go to school. Reading the bill, I literally started crying—thinking about the prospect of this bill becoming a real thing. The fear that ran through me was something I'd never felt before, and I can guarantee you the same will go through the other children in DCPS schools who read this bill. The amount of students who would to be fearful to come to school would skyrocket. Kids are already scared enough of guns, but knowing that people could legally bring assault weapons and guns into their schools would send their fear to all time highs.

This bill would also, in a way, target poorer schools. The bill would prohibit schools without previously implemented security measures. Only schools with money have the ability to take security measures. Poorer school communities would have little to no protection against this bill. Not only would students of poorer schools have lower test scores because of the lack of school funding, but they could also have higher absentee rates because students would be too afraid to come to school.

Another thing to consider is why Senator Rubio is trying to get this bill passed in the first place. The state Senator Rubio represents is Florida, so why is he trying to pass bills in DC? He's also trying to implement this bill in a place that has no representation, and very little say in whether or not this bill gets passed. This leads one to think that, maybe, Senator Rubio's reasoning behind trying to pass this bill is one of ill intent. After all, the NRA did raise his overall rating from a B+ to a A after he proposed the deal.

Finally, this bill would prevent DC from making future gun laws. The bill would end DC's currently implemented ban on firearms, and repeal the registration requirements needed to own a gun. Once this bill gets passed, there is no going back. There is no more safety for the students in DC. There is only fear.

Good morning. My name is Sanaa Stephen. I'm an 8th grade student at Stuart-Hobson Middle School. I recently learned about the Rubio-Garrett bill that will lift the ban on guns in schools, and am deeply afraid of its consequences.

To the creators and supporters of this bill, I say: How many people need to die in school shootings for people to realize that guns are killing machines and if a "mentally disturbed" teenager is given access to this killing machine, he is going to kill. People are always telling us "we are the future", but how will we be the future if we are killed by a gun? There will be no future for us or the parents that didn't see us come home from school. They'll get a phone call instead—a phone call that could have easily been prevented.

Now you want to make this legal? You want to allow killing machines in schools? Schools are supposed to be a safe place for learning, having fun, and being with our peers. If we allow guns in schools, then schools are no longer safe. They will no longer be a safe haven. Instead, they will be a place where you need to watch your back, and be prepared for the worst. I shouldn't be scared to go to school. I shouldn't be scared whenever a classroom door opens. I shouldn't be scared when I walk down the hallway. I shouldn't look at my phone and see that YET ANOTHER school shooting happened JUST THIS MORNING. Kids should never have to worry about losing their lives to guns that have free reign in schools.

**Council of the District of Columbia
Committee on the Judiciary & Public Safety
March 22, 2018
Witness Testimony
Josephine Guire, Student
Stuart Hobson Middle School**

Hello. I'm Josephine Guire from Stuart Hobson Middle School. Since the 2012 Sandy Hook mass shooting, where 20 first graders and 6 adults were shot and killed, more children have died from gun violence than soldiers who have died overseas after 9/11. If more innocent children are dying than the people who are supposed to be protecting our country, then there is a serious problem. How many more of our youth are going to die at school before the government actually does something?

The 2nd Amendment was written two centuries ago when guns were very different from what they are now. Today, guns are far more powerful than they were back then. With the times changing, Amendments must also change to fit the way we currently live. We need to take action now to stop more innocent children and teens from dying. Many of the people in this room have kids of their own. Imagine finding out that your son or daughter was shot and killed by a person with a gun while they were at school today! That is news that far too many parents have heard due to the lack of common sense restrictions on guns in the United States. Tomorrow, I could be sitting in my classroom at school and could be shot and killed because the government isn't doing their job and protecting their citizens from danger. Imagine! Parents could be buying their children bulletproof backpacks one day. Will that be a school policy one day? Will we need to wear bulletproof vests under our uniforms?

Violent crimes in DC have gone down 22 percent in 2017. This is due, in part, to our current gun laws. If these laws are repealed, this would allow people from other states with guns designed for war and people as young as 18 being able to buy guns in DC. Who knows how many people with bad intentions would get guns and use them? Back in the early 1990's DC was known as the 'murder capital'. Is that what we want to be known as again? Do we want to be the city where people are dying everyday from gun violence? We need to stop our youth from dying. We need guns designed for war to be banned from our streets and guns of any kind kept out of our schools. Thank you.

Testimony

Good morning council members, I am Henry Marks. A seventh grader at Stuart Hobson Middle School. How is this still happening? how can a country with a gross domestic product of more than 17 trillion dollars not be able to stop gun violence? Though the size of these tragedies is obviously horrific, it is the consistency of the shootings that is the most troubling. More guns will not help solve the problem, giving teachers deadly weapons is about the most stupid or counterproductive way to try to solve the problem of school shootings. If my teacher was carrying a firearm I wouldn't want to go to my school. Even if one person had a gun I would be scared. They say they that anyone can go off, they say that any child can. While less likely any adult can as well, what if it's the adult with the gun? If nobody has a gun mass shootings are much less likely to occur. Even as I was writing this I got a CNN notification that there was a school shooting in Maryland. What is too much, what will cause Congress to stop taking funds from the NRA, an organization that wants teenagers, people that cannot rent a car to be able to own military grade weapons. An organisation that values gun sales over lives, children's lives. Children who never went home, children who would have had a bright future, who would have grown up, contributed to the economy, had children. So many more bright young children will have their futures cut short by more guns in schools, we must realize that the only real solution is gun control. Thank you.

Educational Fund to Stop Gun Violence
805 15th St NW, Suite 502
Washington, DC 2000

Testimony of:

Dakota Jablon, Policy Analyst, Educational Fund to Stop Gun Violence
IN SUPPORT of Bill 22-0193, *TEMPORARY PROTECTION ORDER FIREARM
RELINQUISHMENT AMENDMENT ACT OF 2017*

and

Bill 22-0400, *EXTREME RISK CIVIL PROTECTION ORDER AMENDMENT ACT of 2017*
Before the Council of the District of Columbia, Committee on the Judiciary and Public Safety
March 22nd, 2018 at 11:00 AM

Councilmember Allen and Committee Members,

Thank you for the opportunity to testify today. As a Ward 2 resident and the Policy Analyst for the Educational Fund to Stop Gun Violence, I am testifying in support of Bill 22-0193, the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017" and Bill 22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017."

The Educational Fund to Stop Gun Violence works to translate research into policy. We use the best available research to determine who is likely to be at the highest risk of violent behavior and at what times, and develop policies that temporarily prohibit them from purchasing and possessing firearms for the duration of elevated risk.

One policy we helped to develop is the extreme-risk law. When an individual is dangerous to themselves or others but is not otherwise prohibited from purchasing or possessing a firearm, there is no legal mechanism for families and law enforcement to remove a gun. An Extreme Risk Civil Protection Order, outlined in Bill 22-0400, fills this gap to keep people safe. Putting time and distance between a respondent and a gun is an evidence-based approach to saving lives.

Emerging evidence demonstrates that these extreme-risk policies are especially effective in suicide prevention. Firearms are the most lethal suicide method and easy access to firearms increase a person's suicide risk.¹ Eighty-five percent of suicide attempts by firearm result in death, as compared to just 2% of attempts using the more common suicide attempt method of poisoning/overdose.² Research shows following a suicide attempt, 9 in 10 attempt survivors do not go on to die by suicide,³ meaning that reducing access to firearms during a suicidal crisis increases the likelihood that an individual will both survive an attempt and not go on to die by suicide.

An evaluation of over a decade of Connecticut's risk-warrant law (a law similar to the Extreme

¹ Miller, M., Barber, C., White, R. A., & Azrael, D. (2013). Firearms and suicide in the United States: Is risk independent of underlying suicidal behavior?. *American journal of epidemiology*, 178(6), 946-955.

² Miller, M., Azrael, D., & Barber, C. (2012). Suicide mortality in the United States: the importance of attending to method in understanding population-level disparities in the burden of suicide. *Annual review of public health*, 33, 393-408.

³ Owens, D., Horrocks, J., & House, A. (2002). Fatal and non-fatal repetition of self-harm. Systematic review. *British Journal of Psychiatry*, 181(3), 193-199.

Educational Fund to Stop Gun Violence
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Risk Civil Protection Order proposed in Bill 22-0400) demonstrated that for every 10 to 20 risk-warrants issued, one suicide death was prevented. The policy reached very high-risk individuals as risk-warrant subjects, nearly 1 in 3 of whom received treatment for mental health and/or substance use in the public behavioral health system in the year following the issuance of the risk-warrant.⁴ This means that temporary risk-based firearms removal policies like the Extreme Risk Civil Protection Order can both save lives and channel individuals towards necessary treatment.

The second state-level and evidence-based policy the Educational Fund recommends and supports is Bill 22-0193, the Temporary Protection Order Firearm Relinquishment Amendment Act of 2017.

Research shows that in order to truly be effective, individuals subject to domestic violence restraining orders of any kind, including temporary protection orders, should have their firearms temporarily removed for the duration of the order. Guns make domestic violence more lethal, and reducing firearm access to domestic abusers saves lives. The temporary phase of a domestic violence restraining order can be the most dangerous time for individuals seeking protection. As such, the Temporary Protection Order Firearm Relinquishment Amendment Act is needed to ensure firearms are taken out of the hands of domestic abusers during this critical time.

Recent evidence shows firearm relinquishment provisions are effective. Research shows firearm-specific intimate partner homicide rates were 14% lower in states with these laws and it is estimated that if every state had restraining order firearm relinquishment provisions, there would have been 120 fewer intimate partner homicide deaths across the nation in 2015.⁵

The research evidence is clear: both temporarily reducing access to firearms for people at high risk of perpetrating violence and requiring individuals subject to a temporary protection order to relinquish their firearms, will save lives.

Members of the committee, I urge you to support Bill 22-0193 and Bill 22-0400, which will create evidence-based tools to prevent tragedies and save lives.

⁴ Jeffrey W. Swanson et al. (2017) Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does it Prevent Suicides? *Law and Contemporary Problems*, 80, 179-208. Available at: <http://scholarship.law.duke.edu/icp/vol80/iss2/8>

⁵ Diez C, Kurland RP, Rothman EF, Et al. State intimate partner violence-related firearm laws and intimate partner homicide rates in the United States, 1991 to 2015. *Ann Intern Med*. 2017;167(8):536-543.

Brady Campaign



To Prevent Gun Violence

**Statement of
Luis Melero, Policy Manager, Brady Campaign to
Prevent Gun Violence
in Support of the Extreme Risk Civil Protection
Amendment Order Act of 2017**

**Before the
Committee on the Judiciary & Public Safety of the
Council of the District of Columbia**

**For a Public Hearing on
Gun Bills Before the Council of the District of
Columbia**

**Presented
March 22, 2018**

Good Morning Chairman Allen, and members of the Committee:

Thank you for inviting me to be here with you today. And thank you for considering these important gun violence prevention bills that will make the District safer for its residents, of which I am one.

My name is Luis Melero. I am Policy Manager the Brady Campaign to Prevent Gun Violence [*"Brady Campaign"*]. For more than two decades the Brady Campaign has fought to enact common sense policies that reduce gun violence, and are consistent with the 2nd Amendment. This first culminated in the hard-fought passage of the Brady Handgun Violence Prevention Act in 1993 [*"Brady Law"*]. The Brady Law mandates that federally licensed firearm dealers run background checks on prospective gun purchasers. Taking this step helps keep firearms out of dangerous hands. And to date, more than 3 million prohibited persons have been prevented from purchasing firearms.

In the wake of yet another mass shooting that extinguished 17 bright and shining lives at Marjory Stoneman Douglas High School - carried out by an individual in crisis who should have never had access to any firearm, much less a semi-automatic assault rifle with high capacity magazines - I am here to discuss the importance of "extreme risk laws" and express the Brady Campaign's support for the Extreme Risk Civil Protection Order Amendment Act, currently before the D.C. City Council.

According to an analysis carried out by one of our gun violence prevention partners, in 156 mass shootings that occurred between 2009 and 2016, in 42 percent of the cases the shooter exhibited signs indicating they posed a danger to themselves or others.ⁱ

As we now know, the Stoneman Douglas shooter exhibited very troubling warning signs leading up to the shooting, including violent outbursts at home and at school, disturbing social media posts with guns and knives, and multiple threats leveled against the school and others.ⁱⁱ Law enforcement and other authorities were told of approximately 40 of these incidents, yet they were limited in the actions they could take in response.

An extreme risk law is an important tool that allows family members and law enforcement to take immediate action. Under an extreme risk law, they are able to present evidence to a court showing an individual is in possession of firearms and poses a risk of harm to self or others. The court will issue a temporary order to temporarily remove firearms from the individual the very same day, as well as prohibit them from purchasing firearms. The court also schedules a hearing, usually within 2 weeks, that allows the individual an opportunity to recover their firearms or for the court to extend the order up to a year. These orders can be renewed, but also, the subject of the order can petition the court to retrieve their firearms if they are no longer in crisis.

An extreme risk law is a good example of a common sense gun policy that protects the public's safety, without infringing any constitutional rights.

In 1999, Connecticut became the first state to allow seizure of firearms from persons in imminent risk of harming themselves or others. Only prosecutors or corroborating police officers can petition the court for the seizure warrant. Indiana followed suit in 2005, with a similar law that only allows police officers to seek a seizure warrant. It wasn't until 2014, 2016 and 2017 that California, Washington, and Oregon passed modern versions of the law to allow both law enforcement and family members to petition the court for a protection order and seizure warrant. And in response to the Marjory Stoneman Douglas shooting, on March 9th, Florida became the sixth state to pass an extreme risk law [*although it only allows law enforcement to petition the court*].

We also know that these laws work. A recently published study from Duke University found that Connecticut's law reduced the number of suicide deaths, concluding that one suicide death is averted for every 10 to 11 gun seizure cases.ⁱⁱⁱ The Duke study also found that in 99 percent of the warrants, at least one firearm was seized, and on average, 7 firearms were seized. Additionally, the study found that 29 percent of the risk-warrant subjects subsequently received treatment from the state mental health services agency.

To complement its law, California created a public education campaign titled "Speak For Safety." Through its website speakforsafety.org, California residents and other stakeholders can learn how California's extreme risk law helps keep communities safe and how to petition a court for an extreme risk order. All necessary court documents are also available for download through the site. A program like this helps to raise public awareness and maximize the public's safety.

Looking ahead, approximately 30 states have introduced extreme risk order bills this year. And just a couple weeks ago, Senators Richard Blumenthal (D-CT) and Lindsey Graham (R-SC) introduced a bipartisan federal extreme risk order bill in the U.S. Congress. We at the Brady Campaign, and I as a District resident, strongly urge the Council to pass this important law.

¹ https://everytownresearch.org/wp-content/uploads/2017/03/Analysis_of_Mass_Shooting_033117.pdf

² <https://www.cnn.com/2018/02/25/us/nikolas-cruz-warning-signs/index.html>

³ <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4830&context=lcp>

TESTIMONY FOR THE D.C. COUNCIL'S COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

TO: Members of the Committee
SUBMITTED BY: Lindsay Nichols, Federal Policy Director, Giffords Law Center
DATE: March 20, 2018

Chairman Allen and Members of the Committee:

On behalf of Giffords, the gun violence prevention organization founded by former Congresswoman Gabby Giffords and her husband Captain Mark Kelly, and the Giffords Law Center, I would like to express our support the efforts of the Council to strengthen D.C.'s gun laws. The goals of the bills being considered today are to: (1) protect victims by removing guns from the hands of abusers and stalkers; (2) create a process for temporarily removing guns from people who present a danger by having them, (3) reduce illegal gun trafficking, and (4) discourage Congress from mandating concealed carry reciprocity.

Ex Parte Protective Orders

Abused women are five times more likely to be killed if their abuser has a firearm.ⁱ Efforts to remove guns from abusers have focused largely on the period when a victim has obtained a protective order against the abuser. However, federal law does not provide victims of abuse with any immediate protection from guns in the hands of their abusers.ⁱⁱ A victim of abuse must wait until the court can hold a full hearing for the abuser's access to guns to be removed, unless a state or local law addresses the issue. This means that, in the days or weeks leading up to the hearing, abusers remain armed and victims remain exposed. A study of 231 women killed by intimate partners found that, among the victims who had a protective order at the time of her murder:

- About 1/5 were killed within two days of the order being issued.
- About 1/3 were killed within the first month after the order was issued.ⁱⁱⁱ

Bill No. 193 would fill this loophole by ensuring that an abuser is immediately ordered to relinquish firearms and cannot pass a background check to purchase firearms after the court has issued an ex parte order. This is crucial to protecting abuse victims who have sought the court's protection.

Ex parte protective orders can significantly restrict the abuser's liberty in ways unrelated to guns: these orders often prohibit abusers from having contact with family members or entering their own residence. Few abusers have challenged courts' authority to issue these orders before a full hearing, citing due process. However, courts have rejected these challenges in situations where there is an immediate danger of harm to the victim and a prompt hearing is available.^{iv} Consequently, D.C. law now allow courts to issue such orders only in these circumstances.

In D.C., a petition for a protective order must include an allegation that the respondent has committed criminal conduct or threatened to commit criminal conduct against the victim. The court can only issue an ex parte order if the petition has been filed under oath and a judicial officer finds that the safety or welfare of the petitioner or a household member is immediately endangered by the respondent. The court must set the matter for a hearing. Such an order generally cannot exceed 14 days. An ex parte order automatically expires when a full hearing occurs, the abuser has an opportunity to appear and challenge the victim's claims, and the court decides whether or not to issue a full protective order.^v

These protections mean that this bill does not impinge on the constitutional rights of respondents but are the proper response to the life-threatening situations that arise when a domestic abuser has a firearm.

Extreme Risk Protective Orders

Bill No. 400, the Extreme Risk Civil Protection Order Amendment Act, is also modeled on existing domestic violence law, and gun laws in six states.^{vi} A common thread in many shootings is that family members of the shooters or law enforcement officers had seen the shooters engage in dangerous behaviors and had concerns about their risk of harming themselves or others – even before any violence occurred. Unfortunately, there was no mechanism for families and law enforcement to have the person's guns removed. Extreme risk protection order (ERPO) laws fill this gap by creating a mechanism for a court to issue an order to temporarily remove guns and prevent the purchase of new guns by individuals who pose a heightened risk of harm to themselves or others.

California enacted this life-saving law in 2014; Washington enacted this law in 2016 by ballot initiative; Oregon enacted it last year. Under these three laws, only family or household members of the respondent and law enforcement may seek these orders. Connecticut and Indiana have similar laws for several years, and Florida enacted a law on March 9 that allow only law enforcement to intervene.

These laws are effective at reducing gun suicides: In the first 14 years of the implementation of Connecticut's law, it is estimated that for every 10 to 20 risk-warrants served, one suicide was prevented.^{vii} These ERPO laws have built-in protections for the individual, similar to the protections afforded respondents to protective orders in cases of abuse or stalking.

We support the Council's efforts to create a similar mechanism for family or household members and law enforcement officers in D.C. to obtain extreme risk protection orders.

Gun Trafficking

Bill No. 588 includes a number of provisions aimed at gun trafficking. The exact impact of the immunity and penalty provisions in this bill in D.C. is beyond our area of expertise. Nevertheless, we support D.C.'s efforts to address the persistent problem of gun trafficking, including the efforts to prevent the trafficking of stolen guns and gun with serial numbers removed or altered.

The requirement that guns have serial numbers is necessary to ensure that guns recovered after use in a crime can be traced back to the original purchaser. Guns without serial numbers present a threat to the public because they can be difficult, if not impossible, to trace, making them highly valuable to criminals and susceptible to gun trafficking. Stolen guns present a similar problem. A gun that has been stolen cannot be traced beyond the victim of the theft. Enabling local prosecutions of gun traffickers who possess or transfer these weapons is an important step in the right direction.

To stem the flow of illegal guns into D.C., we would also suggest focusing law enforcement efforts on higher-level gun traffickers, including those who bring guns into D.C. without registering them as required by D.C. law, and those who possess unregistered guns with the intent to sell them. Unlike most jurisdictions in the U.S., D.C. has a well-established registration requirement that could provide the foundational element for higher-level gun trafficking investigations. New York State has some laws along these lines, building upon its handgun licensing requirement,^{viii} and has used those laws in prosecutions of higher-level gun traffickers.^{ix} D.C. may want to consider similar laws.

Concealed Carry Reciprocity

Proposed Resolution 552 would declare the sense of the Council that concealed carry reciprocity would make D.C. less safe. Giffords strongly opposes the federal bills to mandate that states and jurisdictions like D.C. recognize concealed carry permits from other jurisdictions. We appreciate your support in these efforts.

Please let us know how we can assist as the language for these bills develops.

Sincerely,
Lindsay Nichols

ⁱ Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (July 2003).

ⁱⁱ 18 U.S.C. § 922(g)(8).

ⁱⁱⁱ Katherine A. Vittes & Susan B. Sorenson, *Restraining Orders among Victims of Intimate Partner Homicide*, 14 Inj. Prev. 191 (2008).

^{iv} See, e.g., *Blazel v. Bradley*, 698 F. Supp. 756 (W.D. Wis. 1988).

^v D.C. Code § 16-1001 et seq.

^{vi} Conn. Gen. Stat. § 29-38C; Ind. Code Ann. § 35-47-14; Cal. Penal Code § 18100 et seq.; Wash. Rev. Code Ann. § 7.94.010 et seq.; 2017 OR S.B. 719 (enacted Aug. 15, 2017).

^{vii} Jeffrey W. Swanson et al., *Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does it Prevent Suicides?* Law and Contemporary Problems, (Aug. 24, 2016), at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2828847.

^{viii} NY CLS Penal §§ 265.11-265.20.

^{ix} See, e.g., Brooklyn District Attorney's Office, "Eight Defendants Indicted for Trafficking Across State Lines, Guns Purchased in Georgia and Pennsylvania, Then Bused to New York For Resale on the Streets of Brooklyn," Oct. 14, 2015, at <http://www.brooklynda.org/2015/10/14/eight-defendants-indicted-for-trafficking-weapons-across-state-lines-guns-purchased-in-georgia-and-pennsylvania-then-bused-to-new-york-for-resale-on-the-streets-of-brooklyn/>.

Betty Luther

I come before the Council today to state my support of B22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017." I support this Act because of its emphasis on controlling who can have guns in their hands, and as a safety measure, making sure guns are not in the wrong hands.

Due to the violence we have witnessed here in our community, and all over the United States, I feel as though it is important to place restrictions on people who may be a danger to themselves and others, and should therefore not have possession of a gun. Within this school year we have had 2 lockdowns because of shootings that have taken place around our school community. It is sad to say, while I was in my AP Psychology class here at Eastern Senior High school, on February 14th, the shooting at Stoneman Douglas High school was happening to the students who were in an AP Psychology class as well. In that AP Psychology class 16 year old Carmen Schentrup lost her life along with 3 other students who were injured with a gun wound.

When a firearm is in the hands of people who may pose as a threat, not only is the community in danger, but the possessor is in danger as well.

If this law is enforced, I would feel more safe walking to and from school. I would not have to worry as much about being on lock down, or worry about my surroundings and the sound a bullet being shot. If this law is not addressed, school communities will continue to be in danger. Innocent teens and their families will be forever worried, and afraid for their safety.

Rikiya Strickland

I would like to address the Council today and speak in favor of Bill 22-0400 "Extreme Risk Civil Protection Order Amendment Act of 2017, because I feel that this would help minimize crime by protecting those that may be at greater risk to themselves and others. Some research done by the American Psychological Association shows that more rigorous reporting and background checks of persons whose mental health history disqualifies them from firearms ownership lowers risk of violent criminal offending. This amendment would improve things for me, because I know what it feels like to lose a loved one from gun violence and I know what it feels like to have a loved one that was severely injured from gun violence. My mom, a longtime resident of D.C., limits where I can and can't go because of her fear that something would happen to me. The passage of this amendment will somewhat bring relief to her and the other worried mothers in the District. If this issue is not addressed it will be a very big disappointment to the majority of D.C. residents. According to MPD, eighty percent of homicides in 2005 were caused by guns, and in 2017 ninety-two homicides were by a gun. If we fail to act, the numbers will continue to rise.

Public Hearing 3/22/18
Eastern Senior High School

Kemi Aboagye

I am here to address the Council in my support of B22-0588 Possession of Firearm and Ammunition Penalties Amendment Act of 2017”

My reason for supporting this bill is due to the constant violence in my community. In my community it is not uncommon to hear gunshots on a regular basis and seems to increase on holidays. There have been nights when gunshots rang out so close to my house my mother and I needed to get on the floor. I have seen a boy about my own age hiding under my window suffering from gunshot wounds. One day my mother was walking to the bus stop and was caught in a crossfire. She was shot in her abdomen and all of her important organs were at risk. A neighborhood boy died after multiple gunshot wounds because of neighborhood disagreements.

How would my life change if this law is passed?

Eliminating illegal weapons would make me feel safer. I am scared because there are drive bys in my neighborhood, and I do not know who is going to roll down the street. According to a 2017 article in the Washington City Paper, “The department rarely finds, or brings to justice, those who cross into D.C. with illegal guns and distribute them.” This will hopefully provide the police department with the tools they need to bring to justice those with illegal weapons.

If we don't take action people continue to bring illegal weapons into the district resulting in more deaths.

**Testimony of Wemi Peters
Senior Staff Attorney, Family/Domestic Violence Unit
Legal Aid Society of the District of Columbia**

**Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia**

**Public Hearing Regarding:
Bill 22-0193
“Temporary Protection Order Firearm Relinquishment Act of 2017”**

**Bill 22-0400
“Extreme Risk Civil Protection Order Amendment Act of 2017”**

March 22, 2018

The Legal Aid Society of the District of Columbia¹ submits this testimony to provide feedback regarding Bill 22-0400 “the Extreme Risk Civil Protection Order Amendment Act of 2017” and Bill 22-0193 “the Temporary Protection Order Firearm Relinquishment Act of 2017.” We represent survivors of domestic violence when they petition the Court for Civil Protection Orders (CPOs) and recognize that there is a connection between domestic violence and gun violence. Furthermore, we recognize that our clients in all our practice areas deserve to have the means to ensure that their communities are safe. For that reason, we support the goals of both of these bills and believe that they provide new tools to address public safety concerns about firearm violence. Our testimony today will focus on a couple of changes that we believe will better allow both bills to fulfill their public safety purpose.

Specifically, Bill 22-0400 should be amended to ease burdens on petitioners who might make use of it, mainly by eliminating filing fees and tasking the Office of the Attorney General with all litigation related to initial petitions, modifications, and extensions. Bill 22-0193 should be amended to provide an additional narrow protection against potential misuse of the process. Further, we would like to highlight for the Committee the need to improve enforcement of existing law around relinquishment of firearms when a CPO is issued, as we have long been concerned that respondents in CPO cases do not actually relinquish weapons, even though they are required to do so. Particularly in these times, the Committee and relevant parts of the District Government should focus their attention on ensuring that abusers who have CPOs against them do in fact give up their weapons and that these weapons are properly secured during the time that CPOs are in effect.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 85 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

BILL 22-0400 SHOULD BE AMENDED TO EASE BURDENS ON PETITIONERS

Bill 22-0400 would allow members of the public to harness the Court's power to disarm parties who intend to use guns to inflict harm on themselves or others in the community. As a threshold matter, we are concerned that the name for the orders issued under this bill – Extreme Risk Civil Protection Orders – is very similar to the name for orders issued under the current Civil Protection Order process. A CPO is an entirely different order that applies to parties with a special intrafamily or interpersonal relationship and does much more than disarm the party that is subject to that Order. This similarity in nomenclature may cause confusion when parties attempt to file for the Extreme Risk order, and in fact, may lead fewer potential petitioners to file for ERCPOs if they mistakenly believe that the same intrafamily or interpersonal relationship requirement applies in both types of process. Therefore, we recommend that the name be changed from ERCPO to Extreme Risk Relinquishment Order (ERRO) or some other name that does not incorporate the term "Civil Protection Order."

Beyond the issue of what orders issued under Bill 22-0400 should be called, there are a couple of structural changes the Committee should make to make it more likely that petitioners will make use of the bill's process and that the bill's protections will reliably remain in force.

First, as the goal of Bill 22-0400 is to ensure public safety, the bill should include clear language indicating that, like CPOs, petitioners may file for Orders without cost.

Second, we are very concerned that this bill places a burden on individuals to not merely initiate a case to ensure that the public is safe, but also to litigate the matter to conclusion and be responsible for subsequent motions, such as motions to vacate or extend the order. By placing such an extensive responsibility on private individuals, the bill, in essence, turns private citizens into public safety officials. That burden makes even less sense when the petitioner does not know the respondent well and/or has limited access to information or facts that would support an order to have the respondent relinquish her firearms.

If the bill passes as-written, consider a hypothetical scenario where a college student learns that one of her friends is in possession of a firearm and has been talking about using the firearm against a list of people. The college student could file for an order under Bill 22-0400, but would then be required to follow through with the case, take the time to come to court on subsequent dates, and to find and present additional evidence against the friend, including one or more of the following: a history of use of force (including attempted or threatened) against another person, prior arrests, history of violation of a protective order, documentary evidence of past criminal history and evidence of the acquisition of firearms, ammunition or other deadly weapons within six months of the filing of the petition. Some of this information is not available to the public and even when available, searching for the information puts an undue burden on an individual who has adequate information to raise an alarm but who lacks adequate resources or time to conduct an investigation into another party's past criminal history or firearms purchases or the ability to utilize litigation tools such as subpoenas to gain such information. It also puts the burden on the hypothetical college student to defend against future vacatur or modification requests from the friend and to request extensions if the respondent poses a continuing risk beyond one year – something the hypothetical college student might not even be aware of. If, at any time, the college student moves out of the District or becomes overwhelmed by the process,

the litigation ends, even if the threat posed by the respondent was genuine and persists. As written, the bill rests fulfillment of its valid and important public safety purpose almost entirely on the ability of each individual petitioner to navigate the litigation process successfully.

To eliminate the risk that someone who poses a genuine threat to themselves or others keeps their firearms even after an individual has raised the alarm by filing a case, and to ensure that requests for these orders will receive consistent and adequate follow-through, we suggest that the Committee amend the bill to make the Office of Attorney General responsible for the litigation of these cases once a private individual has filed a petition under Bill 22-0400. The OAG, which includes a public safety office, is equipped to handle this litigation in a way that an ordinary private citizen is not. The OAG has investigative tools at their disposal, skilled lawyers who can prepare and present the required evidence during a hearing, and the benefit of institutional continuity. As the intent of this legislation is to ensure public safety, once the litigation commences, there is a greater chance of the necessary follow-through happening when the burden is not on an individual party but on a government agency with the resources to see an entire case through.

BILL 22-0193 SHOULD BE AMENDED TO INCLUDE FURTHER SAFEGUARDS AGAINST MISUSE

Bill 22-0193, the Temporary Protection Order Firearm Relinquishment Act of 2017, would amend Section 16-1004 of the D.C. Code to include a requirement that a party subject to the Temporary Protection Order (TPO) relinquish their firearms until the protection order litigation is resolved. We are very aware of the relationship between domestic violence and firearms. In particular, survivors of domestic violence are most at risk when they take steps to leave violent relationships. We commend the Council for closing this gap, as this firearm relinquishment provision already exists in the one-year CPO but has so far been missing from the TPOs. However, we have seen abusers routinely use the judicial system to attempt to perpetuate their abuse and control of their victims. As the TPO hearing is usually an ex parte hearing, it offers an unchecked opportunity for an abuser to make claims without opposition. We are concerned that an abuser could abuse this provision within the TPO portion of the CPO process in order to hurt a survivor whose employment – and independence from the abuser – is contingent on carrying a firearm. For example, Legal Aid had a client who was a Special Police Officer who was required to carry a firearm as part of her job. When she filed a petition for a CPO against her abuser, she requested and received a TPO as part of her relief. After being served, her abuser retaliated by filing a counter-petition against her. She ultimately prevailed against her abuser. However, had this provision been in place, she would have been at risk of losing her job if she had to relinquish her firearm for two or more weeks during the pendency of the Civil Protection Order litigation. Therefore, we recommend that the new section include a narrow exception for parties who are required to carry a firearm as part of their job *when the firearm has no substantial relationship* to the alleged intrafamily offense.

EXISTING CPO FIREARM RELINQUISHMENT PROVISIONS SHOULD BE ENFORCED

Furthermore, we would like to draw attention to the lack of enforcement of the firearm relinquishment provision that already exists in one-year Civil Protection Orders. Each CPO issued in D.C. contains a Firearms Warning for Respondents, ordering them to relinquish firearms to local law enforcement within 24 hours after being served with the CPO. However, after a Civil Protection Order is entered, there is no process to ensure that firearms are surrendered to appropriate third parties (i.e. the police, not family or friends). The police are not required to conduct a search for a firearm even after the Court finds that a Respondent, in possession of a firearm, has committed an intrafamily offense. Given the very real connection between domestic violence and gun violence, increased enforcement of the requirement that abusers relinquish firearms when subject to a Civil Protection Order would ensure that survivors of domestic violence do not have to live in fear.

CONCLUSION

Legal Aid supports this Committee's action towards ensuring that D.C. residents are better protected from firearm violence and hope that you will consider and incorporate our proposed changes to both bills. Thank you for your time.

My name is Rachel Usdan. I am a resident of Ward 6 and I have been a resident of Washington DC since 1999. I am an engineer, a mother, and a volunteer with Moms Demand Action.

I am here today to testify on Proposed Resolution 22-0552: Sense of the Council in Opposition to Concealed Carry Reciprocity Resolution of 2017. I am in strong agreement with the Council in opposition to the "concealed carry reciprocity" legislation currently pending in Congress.

"Concealed carry reciprocity," or CCR, would force each state and the District of Columbia (DC) to accept the concealed carry standards of every other state -- no matter how weak or nonexistent those standards might be. This would override the standards set in DC and in the individual states.

CCR unfairly forces DC to accept the standards set in other states. There is no national standard for who can carry concealed guns in public; rather, each state sets its own standards. CCR would not create a national standard, but would instead force DC -- and every state -- to accept the standards of all other states, even if those standards are weaker. The states diverge significantly when it comes to the standards they set for who is allowed to concealed carry. For example, 19 states allow concealed carry without any gun safety training. Similarly, 12 states currently allow residents to concealed carry without first getting a concealed carry permit or passing a background check. By contrast, DC currently requires a permit, background check, 16 hours of firearms training, and 2 hours of range training including a shooting qualification exercise. The drastic variations of concealed carry standards across states-- with some being very low -- is why law enforcement organizations across the country have come out against CCR. In addition, law enforcement often have no way to verify the validity of an out-of-state permit. And even worse, a person from one of the 12 permitless states would have no permit to present at all, leaving law enforcement with no permit to evaluate.

In addition, CCR will make DC a much less safe place. CCR would force DC to allow concealed carry by individuals with dangerous histories, including people with violent misdemeanor convictions, many convicted stalkers, many abusive dating partners, and many other people who pose a danger to themselves and others. DC allows law enforcement to block carry by people with dangerous red flags. This includes people with assault arrests and importantly, people with a history of domestic disturbances, as the presence of a gun in a domestic violence situation increases the risk that the woman will be killed by five times. CCR would override this authority.

The Federal government has been unable to pass any comprehensive gun safety legislation. In this void, the individual states and DC have stepped up and separately passed common sense gun safety measures. CCR would gut so many of these important state laws.

Recent research shows that, when states weaken law enforcement authority to deny concealed carry permits to people who pose a danger, violent crime rates rise by 13 to 15%. Using multiple methods, the researchers consistently found the same result: When more people are allowed to carry in public, violent crime goes up. Instead of passing CCR, the Federal government should pass meaningful gun safety legislation - to require criminal background checks on all gun sales, empower family and law enforcement to seek a court order temporarily blocking a person from having guns when they pose a danger to self or others (also known as "Red Flag" laws), prohibit bump stocks, prohibit the sale of high-capacity magazines, alert law enforcement when criminals break the law and try to buy guns, close the boyfriend loophole which allows abusive boyfriends to buy and possess guns, close loopholes in the background check system that allow certain sales to proceed after three business days, raise the

Testimony of Laura Morris

My name is Laura Morris, I am a resident of Washington, DC and I am a member of Mom's Demand Action. I'm here in support of the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017" and the "Extreme Risk Civil Protection Order Amendment Act of 2017"

I was shot by my ex-husband in 1981. It was the result of the all too common combination of a gun, and a man with a violent temper, and a drug and alcohol problem. In 1981, gun and domestic abuse laws were very lax, and it was easy for my husband to get guns, and no legal way to take them away. He would threaten to kill me regularly, and I had handguns and shotguns pointed at me at least 10 times. I can't adequately convey how terrified I was, and knew the law, as it existed, couldn't protect me. He had always threatened to shoot me in the back of the head if I left him, and I didn't want to take that chance. I was young and too afraid to leave. But he finally made good on his threats, and shot me in our living room. For a few moments, that seemed like eternity, I actually thought I was dead. Thankfully, our son was with family and not in the house.

But I consider myself lucky. By some miracle, I was only wounded, and I went on to divorce him, raise my son, spend time with my friends and family, travel, meet interesting people, move to DC and remarry. I've had a wonderful life in the intervening 36 years. But 50 women each month aren't so lucky and die by a gun in a domestic violence situation. Since 1981 that's 21,600 women. I'd like to speak for them today.

Each life lost to gun violence costs money. According to a 2010 study, it's exactly \$17.25 Million per death. But it also leaves behind motherless children, shattered lives, lost dreams and stolen futures. A life lost to gun violence cannot be replaced.

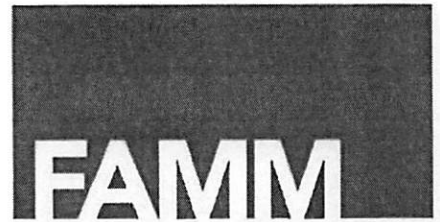
Whenever I think about what happened to me, I think of two other women, both around my age then, who lived within miles of me and were shot and killed by their partners, months before I was shot. Both were in abusive relationships, one had a restraining order against her husband, and both had small children. I wonder how their families carried on. Who raised their children? How did their deaths affect their children?

I also think of my cousin, who was shot to death two years ago, by a neighbor who was a domestic abuser. The neighbor was angry that his wife was leaving him, and frustrated that he hadn't managed to shoot and kill her before she drove away. His frustration led him to walk into my cousin's porch and shoot and kill him instead. If there had been laws then, such as the ones being discussed today, things may have been very different for them and for me.

I could provide more statistics, such as the presence of a gun in a domestic violence situation makes it five times more likely that a woman will be killed. Or that nearly 1 million women alive today in America have been shot, or shot at, by an intimate partner. That's one in 126 women.

But as you can tell, this is much more personal to me than statistics. Gun violence has impacted my life. I only started telling my story in the last few years, and I do it for a purpose. I hope that by sharing my story it will convince those that will listen that the intersection of domestic abuse and guns is a deadly one. One that can be avoided by enacting sensible gun laws as the ones discussed today. These laws will save lives.

Thank you for your time and for listening.



**Testimony of Daniel Landsman
Policy Associate, Families Against Mandatory Minimums
Hearing on B22-0588 and B22-0193
March 22, 2018**

I want to thank Chairman Allen and the Committee on the Judiciary and Public Safety for the opportunity to submit written testimony on behalf of Families Against Mandatory Minimums (FAMM). We write today to urge you to oppose the mandatory minimum provisions in B22-0588 and the expansion of mandatory minimum eligibility in B22-0193 on the grounds that they will be ineffective, inefficient, and defy established evidence.

FAMM is a nonpartisan nonprofit sentencing reform advocacy group founded in Washington, D.C. in 1991. FAMM's mission is to protect public safety and promote efficiency in the criminal justice system by advocating for individualized, proportional criminal sentencing laws. We are not against punishment or prisons. We simply believe that sentences should fit the crime and the offender, and that judges are in the best position to decide the proper punishment in each and every case.

In her letter to Chairman Mendelson, Mayor Bowser explicitly states that the purpose of B22-0588 is to bring District law in line with federal law under 18 U.S.C. § 922 (2018), an objective we ultimately have no stance on. However, this bill curiously goes a step beyond federal law and requires a two-year mandatory minimum not found in the federal code. It is on these grounds that we oppose this bill and urge this committee to reconsider this proposal. Mayor Bowser's goal with this legislation is commendable: she wishes to increase public safety by ensuring violators of this provision are held accountable in the event that the case is not brought before the United States District Court. However, there is a body of evidence to suggest that this bill, by including a mandatory minimum sentence, will not increase public safety and may even hinder it.

To put it simply, there is no evidence to support the claim that mandatory minimum sentences reduce gun-related crime. For example, a 2013 report by the Bluhm Legal Clinic at the Northwestern Law School found that "the evidence indicates, repeatedly, that mandatory minimum sentences will not reduce gun violence." The report goes on to state:

Decades of empirical research, including a recent meta-analysis reviewing over 29 separate studies of the effectiveness of policies and programs that attempt to reduce firearm violence, have established that "policies [like enhanced prison terms] rooted in deterrence theory framework...have been shown to have little empirical support"

The Bluhm report also notes that at least four states – Michigan, Massachusetts, Florida, and Virginia – have experimented with mandatory minimums for gun-related offenses, and all experiments have failed. We know why. Crime rates respond to policies that ensure swift and

certain sanctions on those who choose to break the law. Fear of being caught and punished quickly, not lengthy mandatory sentences, deters crime.

FAMM is also concerned with B22-0193's expansion of the mandatory minimums found in D.C. Official Code 22-4503(a)(5). This bill would remove as an element the requirement that an individual be notified of a court order to relinquish possession of any firearms, subjecting such a person to a two-year minimum penalty for illegal possession of a firearm if he or she is under a protective order. Broadening the scope of this mandatory minimum, particularly in the instance when someone may be unaware of an ex parte order against them, all but guarantees that an unjust and unreasonable sentence will be handed down as an unintended consequence of this bill. While we support efforts to mitigate the harm a knowingly violent individual may inflict, we do not feel that someone unknowingly violating a court order merits the same penalty as someone wantonly disobeying the law.

Furthermore, when considering both of these bills it is imperative to consider the impact these laws will have on public safety, but we must also consider the impact it will have on the ongoing issue of mass incarceration. According to data from the D.C. Sentencing Commission, the number of sentences for weapon offenses increased by 45 percent between 2015 and 2016. Additionally, the sentences being served by weapon offenses appear to already be well over the two-year minimum overall. We should be reticent to increase sentencing and limit judicial discretion in the District of Columbia. The individuals affected by the bill will almost certainly return to our communities one day. Sending more of them away to federal prisons for longer prison terms separates them from their families and communities and places them in an environment that does not foster rehabilitation and personal growth. Such a tactic is counterintuitive and may increase recidivism rates.

FAMM's opposition to these bills is not rooted in sympathy for individuals who use dangerous weapons to harm innocent citizens. Rather, our objection is rooted in a belief – backed by all credible evidence – that mandatory minimums make law-abiding citizens less safe. Mandatory minimums tie the hands of local courts who know their communities best. Bills like B22-0588 and B22-0193 earmark resources for incarceration that would be better used to implement more proactive strategies for decreasing gun-related crime in the District of Columbia. Effective criminal justice policy requires the flexibility that these bills eliminate.

I understand the desire to ensure accountability for those who put our communities in danger, but we cannot let that desire crowd out the evidence. When it comes to gun-related mandatory minimums, the evidence is clear that they do not work. For this reason, we urge you to reject the legislation before you today and adopt evidence-based policies that increase public safety.

Thank you for allowing FAMM to submit testimony to this committee, and thank you for your dedicated service to the District of Columbia. We are happy to be of assistance to you as you consider this important issue.



Council of the District of Columbia

Committee on Judiciary and Public Safety

Councilmember Charles Allen, Chairperson

Public Hearing:

B22-0193 Temporary Protection Order Firearm Relinquishment Amendment Act of 2017

B22-0400 Extreme Risk Civil Protection Order Amendment Act of 2017

March 22, 2018

Testimony of:

**Gretta Gardner
Deputy Director
DC Coalition Against Domestic Violence
5 Thomas Circle, NW
Washington, DC 20005
Tel. 202-299-1181
www.dccadv.org**

Good afternoon Chairperson Allen, Members of the Committee, and staff. My name is Greta Gardner and I am the Deputy Director of the DC Coalition Against Domestic Violence (DCCADV, the Coalition).¹ The Coalition is a membership organization that provides training and technical assistance, conducts outreach, and advocates for policies to end domestic violence in the District of Columbia. Our member programs provide shelter, counseling, support, and legal services for domestic violence survivors, and provide life-saving services to more than 30,000 District residents each year. Today, we are here to express our commitment to keeping victims of domestic violence safe from firearms. The connection between firearms, victimization, and domestic violence injuries and fatalities is disturbing. When guns are used to threaten, injure, or kill, it is frequently women and children who bear disproportionate harm.

Intersection of Domestic Violence and Gun Violence

As recent tragic events have highlighted, gun violence can impact anyone and touches all communities in the U.S., but women in abusive relationships are particularly at risk for severe danger when their partner has access to firearms. When a woman is killed by her intimate partner, the murder is more likely to have been perpetrated with a gun than by all other means combined.² The abusive partner's access to weapons, legal or illegal, is one of the primary indicators that may escalate abuse to a homicide. Abusers with access to firearms are over five times more likely to murder their intimate partner than those without any weapons.³ Federal law has recognized these risks by prohibiting individuals convicted of a "domestic violence misdemeanor," as well as those who are the subject of certain domestic violence restraining or protection orders, from possessing or purchasing firearms or ammunition.⁴ Laws that keep guns out of the hands of domestic abusers—by requiring and ensuring that prohibited abusers relinquish guns in their possession—just make sense. For victims of domestic violence and the community at large, it's a matter of life and death.

¹ DCCADV is the federally-recognized statewide coalition of domestic violence programs, organizations, and individuals dedicated to the elimination of domestic violence in the District of Columbia.

² *When Men Murder Women: An Analysis of 2010 Homicide Data: Females Murdered by Males in Single Victim/Single Offender Incidents*. 2012. Violence Policy Center. Washington, DC. Available at: <http://www.vpc.org/studies/wmmw2012.pdf>.

³ J. C. Campbell, D; Webster, J; Koziol-McLain, C. R; et al. 2003. *Risk Factors For Femicide in Abusive Relationships: Results From A Multi-Site Case Control Study*. American Journal of Public Health. 93(7). Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447915/>.

⁴ 18 U.S.C. § 922(g)(8),(9). DC law contains similar provisions making possession by such persons unlawful, see D.C. Code § 22-4503(a)(5),(6).

B22-0193 TPO Firearm Relinquishment Act

We support The Temporary Protection Order Firearm Relinquishment Amendment Act of 2017, as it marks an important step forward in the effort to protect the safety of domestic violence survivors and their children in DC. This legislation is intended to address and explore the potential opportunities to intervene and prevent gun violence in domestic violence situations at an early stage, prior to the issuance of final protection orders. Fleeing domestic violence is the most dangerous time, with the highest risk for lethality, for a survivor. The Civil Protection Order (CPO) process recognizes this reality by allowing for the issuance of a Temporary Protection Order (TPO) immediately and *ex parte* until a full hearing can be scheduled for the respondent to appear.⁵ A ten-city study found that 20% of homicide victims with TPOs were murdered within two days of obtaining the order; 33% were murdered within the first month.⁶ The flexibility and expediency of TPO's provide legal protection at a critical and early stage of survivor's interaction with the legal system. The removal of firearms at the TPO stage in domestic violence cases can prevent gun violence, reduce homicides, and provide immediate relief to survivors who are often subject to lengthy criminal legal processes that may or may not offer protection.

B22-0193 Recommendations for Improvement

To effectively address the intersection of domestic violence and gun violence, this legislation must recognize the specific nature of gun crime in the District and ensure it can be integrated successfully with existing law enforcement efforts and capacities. To ensure this bill can accomplish the goal of removing firearms, legally possessed or not, from abusive parties, there must be enhanced collaboration with law enforcement. There are still many questions regarding the current protocol for firearm relinquishment within CPO cases in DC and the role that MPD plays in the process. DC does not explicitly authorize or require the removal of firearms or ammunition from the scene of a domestic violence incident; or from the subject of a civil protection order (CPO).⁷ Only 15 states⁸ require abusers subject to final domestic violence restraining orders to surrender their guns. Research found that 75% of

⁵ See D.C. Code § 16-1004

⁶ Vitti, K. A. & Sorenson, S. B.; (2008). Restraining orders among victims of intimate partner homicide. *Injury Prevention*, 14(1), 191-195.

⁷ Giffords Law Center to Prevent Gun Violence. (2017). Domestic Violence & Firearms in the District of Columbia. Available at <http://lawcenter.giffords.org/domestic-violence-and-firearms-in-washington-d-c/>

⁸ CA, CO, CT, HI, IA, IL, MA, MD, MN, NC, NH, NY, TN, WA, and WI.

petitioners felt safer after law enforcement had confiscated their abusers' firearms.⁹ It's vital that the legislation provide a clear surrender and/or forfeiture policy and protocol. Best practice for surrender would include: Background checks on 3rd party transfers to a friend or family member; Alternate storage facilities that will hold the firearm(s) and ammunition with a sliding scale fee for respondents; Protocols that notify petitioners/victims when the firearm has been returned to the respondent; Affidavits of non-surrender (when a respondent does not possess a firearm or ammunition). There should be a written protocol for surrender. A Civil Protection Order, temporary or final, only has teeth if it is backed-up by a consistent, robust, and effective court process and law enforcement response.

B2-0400 Extreme Risk Protection Order Act

While we understand the intent of The Extreme Risk Civil Protection Amendment Act of 2017 and applaud its surrender and relinquishment protocol, we have several concerns about how this legislation would be implemented. The term "civil protection order" (CPO) is used frequently within the domestic violence advocacy community in DC. Its inclusion in the title may cause confusion for individuals and providers. There should be clarity and education on how an individual may seek an order to ensure petitioners are routed to the correct unit. We recommend changing the title and mirroring language from California's order, *Firearm Restraining Order*. Furthermore, we believe that ERCPO hearings should not be in the Domestic Violence Unit (DV Unit). It will make the court, one that is already overwhelmed with an abundance of non-intimate partner violence cases, further burdened with cases that are not DV specific.

We know that abusers are manipulative and will utilize every tool available to them to harm their partner. Batterers may use this process to burden their partner with legal proceedings, damage their reputation, and cause additional destruction to a survivor's life. Currently, five jurisdictions¹⁰ have passed similar laws. Research in these jurisdictions show that the vast majority of cases were reported by an acquaintance of the persons, mostly family. Other jurisdictions limit these filings by family, healthcare and mental health providers, and law

⁹ Vittes, K. A., Webster, D. W., Frattaroli, S., Claire, B E., and Wintemute, G. J. (2013). Removing guns from batterers: Findings from a pilot survey of domestic violence restraining orders recipients in California. *Violence Against Women*, 20(10), 1-15.

¹⁰ CA, CT, IN, OR, WA

enforcement. As written, this order allows a much wider eligibility for petitioners. We believe there should be additional research on the effectiveness of these laws and the unintended consequences they may have on the populations it hopes to protect.

Conclusion

We deeply appreciate the Judiciary Committee hosting this timely hearing on gun violence and the ways we can improve safety for all in the District. We believe that now, more than ever, we must have a more nuanced conversation about gun violence and gun culture. We should name the connection between intimidation, humiliation, and harassment of women and femicide. We have predictors of what leads to domestic violence homicide, we now have the opportunity to implement prevention measures through public policy measures here today. As we work to create solutions and utilize models from other jurisdictions, we urge District leadership not to lose sight of the specific nature of gun crime in the region and seek additional input from the local domestic violence advocacy community and other stakeholders. We believe this conversation and legislation is the beginning of ongoing actions we can take to create a truly safe, dignified, and just society for all. Thank you Chairperson Allen and committee members, I'm happy to answer any questions you may have.

**Testimony of Survivors and Advocates for Empowerment (DC SAFE)
Temporary Protection Order Firearm Relinquishment Amendment Act of 2017 and Extreme Risk Civil
Order Amendment Act of 2017
Committee on the Judiciary - DC Council
March 22, 2018**

Thank you, Chairman Allen and members of the Committee;

My name is Carolyn Hoffmann, and I am the Supportive Advocacy Services Team Coordinator for DC SAFE, an agency that provides advocacy, resources, and tangible aid to survivors of domestic violence in crisis. As the largest access point for these survivors to city services, DC SAFE has assisted over 10,000 survivors this past year from across all eight wards.

I commend the council for taking much needed steps on gun control today. DC SAFE has testified many times in the past on the link between histories of domestic violence and mass shootings. Time and again, the warnings signs were apparent when perpetrators of mass shootings had previously been abusive to intimate partners. From 2009 to 2016, "in 54 percent of mass shootings, the shooters killed intimate partners or other family members."¹ Beyond mass shootings, women in the United States in abusive relationships are at an increased risk of being killed by their intimate partner with a gun. On average, 50 women in the United States are killed with a gun each month and "women in the U.S. are 16 times more likely to be killed with a gun than women in other high-income countries."² Lastly, survivors who were threatened or abused with a firearm, are 20 times more likely to be murdered.³ The discussions that have resulted from these tragedies have been both finding ways to reduce access to the types of guns and accessories that allow a single shooter to kill dozens in minutes, as well as restricting access to guns for those who have been determined to be a risk to themselves or others. I am here to speak on the latter.

In reviewing these bills, I find them to be timely and important, but I have a few questions and issues to discuss today, mostly in relation to Bill 22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017".

Risk Factors

The ERCPO Bill requires the Court to consider evidence of increased risk of violence based on multiple factors including prior arrests for felony offenses and police reports. While this is a good first step towards comprehensively assessing for risk, it does not capture the full picture. In DC SAFE's work, we see great attention being paid to cases that are classified as felonies, but the majority of domestic violence cases are family disturbances or misdemeanors. As such, a risk analysis based solely upon felonies and police reports would not screen for all types of high risk cases. In 2017, a woman was stabbed to death by her former intimate partner while she was holding her child. She had called MPD twice the day before, but no arrests were made and no interventions were successful.⁴ A history of domestic violence calls and reported pattern of violence is often an important indicator of risk,

¹ <https://everytownresearch.org/guns-domestic-violence/>

² Ibid

³ <https://www.ncjrs.gov/pdffiles1/jr000250e.pdf>

⁴ <https://www.nbcwashington.com/news/local/Police-Mother-Found-Stubbed-to-Death-in-Apartment-448249573.html>

regardless if those incidents were considered felonies or misdemeanors. Moreover, strangulation is not considered a standalone felony in DC, making it one of few jurisdictions that does not have any legislation addressing this potentially lethal act of violence. Survivors who have been strangled by their intimate partner are ten times more likely to be murdered.⁵ Before a determination of what constitutes "extreme risk" is tied to existing felony classifications, it is imperative that the DC code accurately addresses the severity of different types of violence.

Enforcement and Oversight

Similar to the current T/CPO policies and practices, the TPO Firearm Relinquishment Act lacks an adequate explanation on the process for and oversight of relinquishment. As it stands now, there is no formal protocol from the Court to enforce any required relinquishments. Without a set process, it leaves Petitioners with the added responsibility to notify law enforcement of the Respondents' failure to comply. We urge the council to consider detailing a surrender protocol that accounts for background checks on third party transfers, alternate storage facilities to hold the firearms and ammunition with the cost being based on a sliding scale, and protocols around how petitioners will be notified when firearms and ammunition are returned to the respondent.

Likewise, the ERCPO bill states that MPD "shall request" that firearms and ammunition be surrendered. However, there is no information on what steps are taken if firearms are not freely relinquished. While legal firearms can, for the most part, be identified and tracked, this bill does not clearly explain if the requirement extends to situations in which the Petitioner is alleging that the Respondent has access to illegal firearms. Will the courts issue a warrant in those cases and will MPD perform a search and seizure? If so, considering that this is defined as an emergency risk, this bill should outline a timeframe in which MPD would be required to act. If a Petitioner were to obtain an ERCPO, but the Respondent denied having access to guns and was given ample time to hide or relocate the firearm, this would only put the Petitioner and the community at increased risk for harm should the Respondent seek retaliation while still having access to firearms. We recommend the Council reviews this implementation process with active involvement of the advocacy community.

Lastly, we share the concern of the DC Coalition Against Domestic Violence that the ERCPO could be a potential outlet for abusers to control and harass their victims. We ask the council to do further research on potential unintended consequences of this bill on vulnerable populations like survivors of domestic violence.

Incorporation into Current Practices

It is also unclear how the implementation of an ERCPO would interact with the current statute around civil protection orders. To begin, in DC, Protection Orders can only be accessed by those with an intrafamily relationship to the offender. Given that ERCPOs are intended to extend beyond these relationships, we urge the council to reconsider the name of this proposed Bill. Additionally, for those Petitioners who would be seeking both a Civil Protection Order and an ERCPO, it is unclear if Petitioners would need to file separately for these orders, one for the existing relief which can include relinquishment of a firearm and the other to address the firearm issue more comprehensively. Lastly, as this bill reads, it seems to create a higher bar for access to an ERCPO, which could potentially create

⁵ <https://www.ncjrs.gov/pdffiles1/jr000250e.pdf>

conflicting results from judges if one were to be granted the relinquishment provision in a CPO, but not be granted relinquishment from an ERCPO.

In order to avoid this confusion and potentially duplicative process for survivors, we ask the council to consider adding all of the additional protections and enforcement protocols around firearms and ammunition to the current CPO protocols and practices, while renaming the ERCPO and having it as a separate process.

I have outlined additional questions and issues to consider related to the points I have discussed today and those that were not discussed at all in my written testimony that I have submitted to the council. I would like to thank the Council for their continued support of survivors of domestic violence and victim service providers and am available to discuss any follow-up questions with members of the Council.

Additional Questions and Issues

- How/where are respondents supposed to be relinquishing these firearms?
- What happens in situations in which someone is federally allowed to have a firearm for their work but they are required by either Bill 22-0400 and Bill 22-0193 to relinquish?
- The gun unit is supposed to be cross-referencing the list of respondents with those who attempt to purchase firearms legally. Are they actually doing this? What is their process for ensuring respondents' ability to purchase firearms is denied?
- How is MPD to notify a petitioner that an ERCPO is set to expire? Mail? Phone? Email? All of the above?
- How are Petitioners assisted if they do not have firm details on the type and location on gun? Can they still file for an ERCPO?
- This bill outline that there is a penalty for filing for an ERCPO if the petitioner knows that the information is materially false. How are cases handled in which a Petitioner has limited details on the firearm and/or ammunition, but the respondent says that the Petitioner is lying?
- If a ERCPO is denied or terminated, does this affect the standing of a TPO or CPO?
- When determining if an ERCPO should be denied or terminated, does an unsuccessful result of a search and seizure affect this outcome? Should a respondent hide their firearm(s) and claim innocence, this should not affect the courts' determination on whether the respondent is an extreme risk, nor should it undermine the credibility of Petitioner.
- Are petitioners given notice for hearings related to respondents seeking termination of ERCPOs?
- If an order is granted and then later terminated, is there an appeal process for the petitioner?
- The Bill 22-0400 states that ERCPO expired after one year, but petitioners have the option to renew. Is there a limitation on the number of times the order can be renewed?
- Why is it MPD service only for Bill 22-0400? How does this account for situations in which the Petitioner does not know the respondent's address?
- Can service of an ERCPO be valid if served upon another resident over 18 at the address of the respondent's address? According to the court rules service is allowed for TPOs and CPOs "upon an individual other than a minor or an incompetent person, by delivering the service copies of the summons and complaint to the individual personally or by leaving them at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then living there."

- Why is evidence of acquisition of firearms, ammunition, or other deadly weapons limited to being within 6 months? Would Petitioners filing against Respondents who have owned guns for longer than that have a higher barrier to accessing an ERCPO?
- For existing TPOs and CPOs, there is an option for petitioners to obtain an Emergency Temporary Protection Order outside of the court business hours. Safety of Petitioners and the community should not be limited by the hours of business of the court and an emergency option should be available for the relinquishment of firearm(s) and ammunition.
- Bill 22-0400 requires MPD to maintain a searchable database of this information available to law enforcement agencies upon request. Is this information that responding officers have access to? Considering that domestic violence situations are some of the riskiest incidents for officers to respond to, it would be beneficial for them to be aware if a suspect in a call for service is alleged to have access to a firearm, has an ERCPO against them, and whether or not they have relinquished that firearm. It would also be an opportunity for them to potentially seize the firearm and/or ammunition on site.

Committee on the Judiciary and Public Safety

Subject: B22-0193, the “Temporary Protection Order Firearm Relinquishment Amendment Act of 2017.”

Testimony of Naida Henao, NVRDC’s *Strategic Advocacy Counsel*, March 22, 2018

Thank you Chairman Allen, Councilmember Cheh, other Committee members, and staff for your commitment to the safety of DC residents. My name is Naida Henao and I am testifying today on behalf of the Network for Victim Recovery of DC (NVRDC) in my capacity as Strategic Advocacy Counsel. Since May 2012, NVRDC has provided holistic victim services, including free legal representation, advocacy, and case management to over 3,000 victims of crime in the District. In 2017, approximately 40% of our clients sought Civil Protection Orders (CPOs) through DC Superior Court’s Domestic Violence Unit. These clients sought CPOs because they feared for their safety in their homes, at work, at school, and other places in the community. Clients flee for a variety of reasons, including domestic and dating abuse, sexual assault, and stalking. I am here on behalf of those clients to express NVRDC’s support for the Temporary Protection Order Firearm Relinquishment Amendment Act of 2017.

Fleeing domestic violence is the most dangerous, and potentially lethal, time for a survivor. A ten-city study in 2008 found that 20% of homicide victims with Temporary Protection Orders (TPOs) were murdered within two days of obtaining the order, and 33% were murdered within the first month.¹ In cases of domestic violence where the abuser has a gun, a woman is five times more likely to be killed.² Requiring the relinquishment of firearms during this perilous time will be an additional layer for protection, and will establish a safer DC for survivors and their communities.

While NVRDC supports the Council’s effort to extend firearm relinquishment to TPOs, Bill 22-0193 misses an important issue that currently exists for both TPOs and CPOs—there is no enforcement provision for the surrender of firearms. This issue must be addressed for both TPOs and CPOs in order for them to be more than empty promises that put survivors at risk.

While it is prohibited for the subject of a CPO to possess a firearm, DC law fails to explicitly authorize or require the removal of firearms or ammunition from that individual.³ There

¹ Vites, K.A. & Sorenson, S.B., Restraining Orders Among Victims of Intimate Partner Homicide, *Injury Prevention*, 14(1), 191-195 (2008).

² Campbell, J.C., Webster, D. Koziol-McLain, J. et al, Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study, *American Journal of Public Health*, 93(7), 1089-1097 (2003).

³ DC Code § 22-4503; DC Code § 16-1005(c)(10).

is no guidance in the DC Code, the DC Superior Court Rules,⁴ or Metropolitan Police Department (MPD) procedure on how to ensure that individuals with CPOs issued against them, called “Respondents,” relinquish their prohibited firearms. There are no requirements for the procedure of relinquishment, there is no system for verification of compliance, and there is no effective enforcement of violations. TPOs and CPOs are an important step in risk-reduction for survivors. However, without addressing this gap in protection, survivors will be left with a false sense of security. DC laws should ensure that when a survivor obtains these protection orders, Respondents will be unable to access deadly weapons. Without enforceability, there will be no accountability.

NVRDC respectfully recommends that the Council adopt the enforcement mechanisms found in the Extreme Risk Civil Protection Order Amendment Act of 2017,⁵ and apply them into TPOs and CPOs, with some modifications. The enforcement provisions of Bill 22-0400 list in detail how law enforcement will recover firearms from individuals, how the relinquishment will be documented, how the firearms will be stored, how they will be returned, etc. These enforcement mechanisms mirror those of eight different states around the country that employ processes for the surrender of firearms following the issuance of TPOs and CPOs.⁶

Our only suggestions that deviate from Bill 22-0400’s language are the background check and penalty provisions. Bill 22-0400 requires law enforcement to undertake a background check before returning firearms to a Respondent. Cases that are litigated within the Domestic Violence Unit, including TPOs and CPOs, are listed separately from criminal arrests and convictions. As a result, a typical criminal background check may not reflect these adjudications. NVRDC asks that the Council specify that any reference to a background check in the bill is meant to include the protection order registry in addition to a search for criminal arrests and convictions. We ask the Council take this extra step to ensure that this information is considered by law enforcement in determining whether to return a firearm to a Respondent.

⁴ CPOs include a DC Law Firearms Warning which states the following, “You must relinquish within 24 hours after being served with Civil Protection Order (CPO) all firearms that you own or possess to your local law enforcement officials. Failure to do so is a criminal offense under D.C. Code 22-4503 that if convicted, carries a penalty of two (2) to 10 years in prison or a fine of \$15,000 or both. . .” However, as indicated, DC Code § 22-4503 does not authorize the Court or law enforcement to remove firearms or ammunition from an individual’s possession.

⁵ Bill 22-0400, Extreme Risk Civil Protection Order Amendment Act of 2017, Sections 905d-905f.

⁶ The 8 states include: California, Delaware, Illinois, Massachusetts, New Jersey, New York, Rhode Island, and Tennessee.

NVRDC also asks that the Council reconsider the current penalties for violations of the firearms relinquishment provision. NVRDC strongly supports the proposed period of incarceration, we believe that the five-year term adequately reflects the gravity of the prohibited conduct. It is this thoughtful recognition that will provide DC survivors with the assurance that if they turn to TPOs and CPOs for safety, the mechanisms will be provide reliable and appropriate responses to violent and uncooperative Respondents.

NVRDC does have two minor suggestions for the penalties imposed. First, we request that the Council consider an increasing penalty structure for subsequent violations, similar to the laws that exist in Maryland.⁷ Under this model, subsequent convictions for illegal possession of the firearms would permit a judge to increase both the fines and the possible range of incarceration. The second suggestion is to include a penalty for persons who knowingly or recklessly provide a Respondent with a firearm, or assist the Respondent in hiding the firearm from law enforcement. NVRDC believes that these two suggestions will increase the rates of compliance, and will decrease the threats to our clients.

NVRDC sincerely thanks the Council for shedding light on the lethal intersection of gun violence and domestic abuse. Women in the United States are 16 times more likely to be killed with a gun than women in other high-income countries.⁸ However, a 2006 study found that female intimate partner homicide rates decline 7% after a state passes a law that restricts access to firearms by individuals convicted of domestic violence misdemeanors or are subject to restraining orders.⁹ By supporting this bill, and requiring the relinquishment of firearms in TPOs and CPOs, you are helping DC take a crucial step in making survivors and women in this country safer. I am happy to answer any questions you may have.

⁷ Md. Criminal Law Code Ann. § 4-203.

⁸ Grinshteyn, E., & Hemenway, D., Violent Death Rates: The US Compared with Other High-Income OECD Countries, *The American Journal of Medicine*, 129(3), 266-273 (2016).

⁹ Elizabeth R. Vigdor et al., Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?, *30 Evaluation Rev.* 313, 332 (June 2006).



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**TESTIMONY OF WALTER SMITH, EXECUTIVE DIRECTOR
DC APPLESEED CENTER FOR LAW AND JUSTICE**

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
PUBLIC HEARING ON**

Bill 22-0193, the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017"

Bill 22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017"

Bill 22-0588, the "Possession of Firearm and Ammunition Penalties Amendment Act of 2017"

Proposed Resolution 22-0552, the "Sense of the Council in Opposition to Concealed Carry Reciprocity Resolution Act of 2017"

**John A. Wilson Building Room 500
March 22, 2018**

Good morning Chair Allen and members of the Committee. I am Walter Smith, Executive Director of the DC Appleseed Center for Law and Justice. DC Appleseed is a nonprofit public interest organization that addresses important issues facing residents of the National Capital Area. Thank you for convening this hearing on these several bills, which address the timely issue of gun safety. I am here this morning with our pro bono counsel from WilmerHale to testify in support of these bills and to make some recommendations both about the bills and about further steps the Council might take as it reviews the District's gun safety rules.

Since filing an amicus brief at the invitation of the D.C. Attorney General in the Supreme Court in *District of Columbia v. Heller* a decade ago, DC Appleseed and our pro bono lawyers have worked closely with the District to help improve its gun safety laws and defend them against Second Amendment challenges. We have also testified to the Council concerning the need to gather data and build a legislative record that will both inform the Council's decisions and help withstand constitutional scrutiny after *Heller*.

In my testimony this morning, I will first describe the current legal standards that govern how the Council can protect the public from gun violence, consistent with the Second Amendment.

This will include the important new standard the D.C. Circuit recently laid down in its *Wrenn* and *Grace* decisions.

Second, I want to support Bills 22-0193 and 22-0400 as part of a coordinated effort by the Council to ensure that the District's gun restrictions best promote public safety in light of the ever-developing Second Amendment law in the federal courts. In her testimony, our pro bono partner from WilmerHale, Tiffany Wright, will make specific recommendations about possible changes to these bills. She will also recommend changes that the Council might make through other legislation to limit access to firearms consistent with the new *Wrenn* and *Grace* standard.

Finally, I'll discuss the importance of collecting and making available further data showing the misuse of firearms in the District. Our WilmerHale counsel will elaborate further on this point about the particular data that might be gathered.

1. The State of D.C.'s Gun Laws, after *Wrenn* and *Grace*

The District of Columbia has been at the epicenter of legal developments surrounding the Second Amendment over the past decade.

In *District of Columbia v. Heller* in 2008, the Supreme Court overturned the District's near complete prohibition against handguns in the home, holding that there is an individual constitutional right of "responsible citizens to use arms in defense of hearth and home." 554 U.S. 570 (2008).

Subsequently, the Council amended its firearm registration requirements in response to *Heller*. These requirements were also challenged. In *Heller II*, the U.S. Court of Appeals for the D.C. Circuit laid out the standard for determining the constitutionality of the registration requirements. *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011). First, the standard asks whether the restriction impinges on a Second Amendment right. If it severely burdens the "core" right, strict scrutiny must be applied; if it does "not severely limit the possession of firearms," intermediate scrutiny applies. To survive intermediate scrutiny, the District must demonstrate "a substantial relationship or reasonable 'fit' between" the restriction and "its governmental interests."

In 2015, the D.C. Circuit applied intermediate scrutiny to the District's registration requirements in *Heller III*, in which a 2-1 panel overturned several requirements and upheld several others.¹ *Heller v. District of Columbia*, 801 F.3d 264 (D.C. Cir. 2015).

In addition to these cases regarding guns in the home, there is a related line of cases regarding carrying guns in public that has significant implications for Council legislation. In 2014, a federal judge struck down the District's prohibition on carrying a handgun in public. *Palmer v. District of Columbia*, 59 F. Supp. 3d 173 (D.D.C. 2014). This led the Council to amend its public-carrying law to allow a license to individuals showing "a good reasons to fear injury to [their] person or property" or "any other proper reason for carrying a pistol." D.C. Code § 22-4506(a)–(b). But a 2-1 panel of the D.C. Circuit recently overturned this law, finding that it amounted to a "total ban on most D.C. residents' right to carry a gun in the face of ordinary self-defense needs." *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017).

In striking down the "good reason" requirement, however, the panel shed light on how the Council can regulate firearms under the Constitution. It said that the District must allow individuals who are "no more dangerous with a gun than the next law-abiding citizen" to "carry a gun in face of ordinary self-defense needs." *Id.* at 666. It also said that those "needs" must be measured by "the risks and needs typical of law-abiding citizens." *Id.* at 665. Finally, the panel said that the District can limit firearms to those shown to be "responsible citizens," denying them to those who are "prone to misuse" them. *Id.* at 666.

2. Red Flag Laws

In the wake of recent mass shootings, many jurisdictions have considered or implemented "red flag" laws, which allow (with some variation) family members, household members, and law enforcement officers to petition a court to remove a person's access to guns if he or she poses an imminent danger to his- or herself or others. These laws are modeled on other kinds of restraining orders, such as domestic violence restraining orders, which allow the prevention of violence in civil

¹ The Court upheld registration requirements for long guns, the requirement to be fingerprinted and photographed and make a personal appearance in order to register, the requirement to pay registration fees, and the requirement to complete a firearms safety and training course. The Court overturned the requirement that an individual bring the firearm to be registered, the requirement to reregister every three years, the requirement to pass a test on D.C. firearms laws, and the prohibition against purchasing more than one pistol per month.

court without necessarily escalating the situation to a criminal court. The laws aim to balance the need for due process with the need to protect the public.

Bills 22-0193 and 22-0400 are different types of civil protection orders. Bill 22-0193, the “Temporary Protection Order Firearm Relinquishment Amendment Act,” would amend the chapter of the D.C. Code on “Intrafamily Offenses” (domestic violence) to add that any temporary protection order (TPO) issued after a hearing by the Domestic Violence Unit shall direct the respondent to relinquish any firearms. Initial orders via this process last 14 days. The existing language in this section of the code allows for ex parte temporary protection orders at the discretion of a judicial officer, “if that officer finds that the safety or welfare of the petitioner or a household member is immediately endangered by the respondent.” D.C. Code § 16-1004 (b)(1). However, it does not allow for an “emergency,” immediate removal of firearms prior to a hearing. Because this bill would locate firearm TPO’s in the established Intrafamily Offenses chapter of the code, it doesn’t establish new processes.

Bill 22-0400, the “Extreme Risk Civil Protection Order Amendment Act,” would authorize temporary extreme risk civil protection orders to be decided the same day petitions are submitted, on the basis of personal knowledge demonstrated by examination under oath or signed affidavit. Longer term (one year with possible renewal) extreme risk civil protection orders would be allowed after a hearing (to be held within 14 days of when an ex parte order was granted). The standard under this bill would require the court to find a “reasonable belief to find that the subject of the petition poses an immediate and present danger of causing personal injury to self or others.” It defines this danger, “increased risk for violence,” as including:

- unlawful/reckless use, display, or brandishing of a firearm
 - history of attempted/threatened/actual use of physical force, with or without a firearm
 - any prior arrest for a felony offense
 - any history of violation of a protective order
 - documentary evidence (such as police reports and records of convictions) of recent criminal offenses involving controlled substances or ongoing abuse of controlled substances or alcohol
 - acquisition of firearms/ammunition/deadly weapons within 6 months of date petition filed
-

Bill 22-0193 would be a subtler change to existing law. With its time limited order (14 days) and requirement that all orders be preceded by a hearing (though some may be ex parte), it raises lesser due process concerns than Bill 22-0400. However, Bill 22-0400 is responsive to the *W'renn/Grace* decision, which held that those most likely to misuse firearms may be denied permits. Bill 22-0400 lays out specific criteria which would be used to determine whether persons pose an "increased risk of violence" and thus would be more likely than the average person to misuse firearms. By contrast, Bill 22-0193 includes only one category of those most likely to misuse firearms – persons subject to a domestic violence restraining order. As addressed in WilmerHale's testimony, we believe these bills meet the constitutional standards, but would propose adoption of a higher standard for the burden of proof petitioners must meet to deny firearms to an individual –changing the standard from "preponderance of the evidence" to "clear and convincing evidence."

3. The Council Should Collect and Analyze Data and Review All District Gun Laws

The cases suggest that the Council and other District leaders should review the District's gun laws to determine if they do in fact limit access to guns to residents who meet the Court's recent standard in *W'renn*. This would involve marshaling data from the District (at a minimum) and (ideally) other jurisdictions to determine useful criteria for denying guns to those "prone to misuse" guns. This might result in the adoption of new requirements, as well as the strengthening of previous requirements, that would meet the Court's standard. All should be developed with input from the community and professional experts. Through such a process, the District may increase its confidence both that it has kept firearms from those prone to misuse them, and that, if its rules are challenged again, they should be upheld by the courts. In her testimony, our WilmerHale counsel suggests two changes the Council might want to consider now that appear consistent with the *W'renn/Grace* standard. She also suggests the kind of data that should be systematically gathered and analyzed.

While here, as in many jurisdictions, data about the circumstances leading up to and surrounding incidents involving firearms is difficult to maintain, we can and should make that a priority. The Council has already demonstrated its understanding this, as the data collection requirements of the NEAR Act would provide a great deal of information about the parties to felonies if implemented. D.C. Code § 1-301.191(c)(6). Investments in better data collection would be more than worth it to support better public policy that literally saves lives.

* * *

We applaud the Council for examining and revising the District's gun safety laws in the wake of new case law, and of ongoing shooting deaths across the country. We hope you will continue to explore the development of new or revised legislation consistent with the new standard laid out by the Court. DC Appleseed and our pro bono lawyers are ready to assist in marshaling the data and conducting the analyses necessary to accomplish this. Thank you for the opportunity to testify, and I am happy to answer any questions you may have.

TESTIMONY OF TIFFANY R. WRIGHT, SENIOR ASSOCIATE
WILMER CUTLER PICKERING HALE & DORR LLP

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

Thursday, March 22, 2018, 11:00 a.m.
Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Good morning Chairman Allen and members of the Committee. My name is Tiffany Wright, and I am a Senior Associate in the Washington, D.C. office of Wilmer Cutler Pickering Hale and Dorr LLP, also known as WilmerHale. Thank you for convening this hearing and for the opportunity to share my thoughts on the proposed legislation.

My testimony will address three topics. First, I will discuss and make one recommendation regarding Bill 22-0400, the "Extreme Risk Civil Protection Order Amendment Act of 2017." Second, I will offer recommendations on the collection of data necessary to craft additional gun-safety legislation that can withstand legal challenges. Finally, I will make two suggestions for legislation supported by existing data.

The Extreme Risk Civil Protection Order Amendment Act of 2017 (Bill 22-0400)

The Supreme Court's opinion in *Heller* makes clear that "the right secured by the Second Amendment is not unlimited"—there is no "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). The D.C. Circuit's opinion in *Wrenn* leaves open the door to restricting access to firearms for those "prone to misuse" them and those who are proven "more dangerous with a gun than the next law-abiding citizen." *Wrenn v. District of Columbia*, 864 F.3d 650, 666 (D.C. Cir. 2017).

By prohibiting firearm possession by individuals proven to present a significant danger of injury to themselves or others, the Extreme Risk Civil Protection Order Act is on firm Second Amendment ground. Those who pose a present danger to themselves or others as evidenced by the criteria set forth in the proposed legislation are likely prone to misuse firearms and fall outside the behavior typical of law-abiding citizens. The Act thus falls within the door left open in *Wrenn* and is consistent with the Supreme Court's recognition in *Heller* that some dangerous individuals—such as felons and the mentally ill, *see Heller*, 554 U.S. at 626—may be precluded from firearm possession.

But that is not the only constitutional hurdle the proposed law must surmount. Because the Act involves seizure of lawfully owned property, it must ensure that such seizures are done

WILMERHALE 

consistent with the Constitution's Due Process Clause. Whether a law provides sufficient due process requires balancing of (1) the importance of the interest at stake; (2) the risk of an erroneous deprivation of the interest because of the procedures used, and the probable value of additional procedural safeguards; and (3) the District's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Given the nature of the individual's interest, any law permitting the deprivation of the right—even for a limited time—should provide procedural protections to avoid erroneous deprivation.

In nearly every respect, the District's proposed law does just that. Persons subject to an extreme risk civil protection order are notified and entitled to a hearing. The proposed legislation also provides additional protections, such as the right to consult an attorney and the ability to seek termination of the order prior to its statutory expiration date. As for *ex parte* protection orders issued prior to a hearing, such orders are permitted only upon proof of an *imminent* and *significant* danger, and are immediately followed by full process.

I offer one suggestion for improvement. As drafted, the legislation permits issuance of an extreme risk civil protection order if the petitioner proves the necessary criteria by a preponderance of the evidence. This is a comparatively low standard; it simply means more likely than not. Of the five states that enacted similar laws prior to the Parkland shooting, all but one required proof by clear and convincing evidence. See Cal Penal Code § 18175(b); Conn. Stat. § 29-38c(d); Or. Stat. Ch. 737, § 2(6)(a); Ind. Stat. § 35-47-14-6(a). The District would join the State of Washington in requiring only a preponderance of the evidence. See Wash. Stat. § 7.94.040(2). Although a preponderance of the evidence standard might survive a constitutional due process challenge, given the compelling nature of the District's interest in avoiding gun violence, the District may want to avoid such a challenge. A clear and convincing standard would provide heightened due process protections without significant effect on the ability of petitioners to prove the facts necessary to obtain an extreme risk civil protection order.

Finally, if the law is enacted, I urge the District to collect data regarding the number of petitions, the issuance of orders, and outcomes as a result of the Act. This will permit the District to demonstrate the effectiveness of its law and might provide an example for other jurisdictions to follow.

Data Collection

The Extreme Risk Civil Protection Order Act is an important and laudable first step toward improving gun safety in the District in the wake of *Heller* and *Wrenn*. *Wrenn* leaves open the door to restrict firearm access by those “prone to misuse” guns. But depending on the contours of such restrictions, they may be subject to intermediate constitutional scrutiny; that is, the District may have to demonstrate that its laws are “substantially related to an important governmental objective.” *Wrenn*, 864 F.3d at 666, 670. This is a demanding standard that requires a “tight fit

between the registration requirements and an important or substantial governmental interest.” *Id.* at 670.

Since late last year, I have worked with DC Appleseed to develop recommendations for gun-safety legislation that will survive judicial scrutiny. A major impediment to such proposals is the lack of data regarding gun use in the District. To prove the “tight fit” demanded by *Wrenn*, the District should be prepared to show more than a probable or hypothetical need for its firearm regulation—it should stand ready to show that data support the need for its laws. But, as recognized by the D.C. Circuit in *Heller III*, existing data “is either incomplete or influenced by partisanship.” *Heller v. District of Columbia*, 801 F.3d 264, 282 (D.C. Cir. 2015). Thus, I would recommend the collection and analysis of pertinent District of Columbia data to answer such questions as:

- Who are those “prone to misuse” firearms?
- How often are guns used negligently or recklessly by lawful gun owners?
- What behaviors lead to accidental shootings?
- What factors account for the rise in violent crime after adoption of right-to-carry laws? Increased crime by lawful gun owners? Perpetrator responses to the presence of a firearm?
- Are criminals deterred by guns during attempted crimes? What are common responses to the use of a gun for self-defense?
- What percentage of legal gun owners commit violent crimes involving their firearms?
- Aside from licensing and registration, what state laws have been most effective at curbing gun violence?

A useful next step after passage of the Extreme Risk Civil Protection Order Amendment Act would be to work with law enforcement and authorities both here and in other jurisdictions to gather this data.

Potential Reforms

Finally, D.C. might consider potential improvements to its gun-safety laws on the basis of existing research. As noted above, the D.C. Circuit’s decision in *Wrenn* recognizes that the government may restrict the possession of firearms by those “prone to misuse” them and those who are proven “more dangerous with a gun than the next law-abiding citizen.” As for some traits widely recognized as reducing competence and responsibility to bear arms—such as illegal drug use and history of violent crime—D.C. already prohibits or restricts issuance of firearm registration certificates. See DC Code § 7-2502.03. This provision makes the District a leader among jurisdictions in sensible regulation of firearms safety and usage. There are two potential improvements that the Council might consider.

First, the District could impose additional restrictions on gun possession by those with a history of drug or alcohol abuse. Research supports this change. Unsurprisingly, research demonstrates that alcohol consumption reduces shooting accuracy and impairs judgment about firearm use. *See, e.g.,* Brendan Carr, *A Randomized Controlled Feasibility Trial of Alcohol Consumption and the Ability to Appropriately Use a Firearm*, 15 *Inj. Prev.* 409 (2009). Among men, deaths from alcohol-related firearm violence equals those from all alcohol-related motor vehicle crashes. *See* Garen J. Wintemute, *Alcohol Misuse, Firearm Violence Perpetration, and Public Policy in the United States*, *Prev. Med.* (2015). Moreover, research consistently shows that illegal drug use is associated with a heightened risk of violence—the physical and psychological effects of drugs impair decision-making and make violence more likely. *See* Consortium for Risk-Based Firearm Policy, *Guns, Public Health and Mental Illness* 22 n.171-175 (2013) (collecting sources). The District currently prohibits issuance of registration certificates to persons convicted of narcotics crimes, convicted of driving under the influence on two or more occasions, or found to be a chronic alcoholic by any court. Other states—such as Hawaii, Hawaii Rev. Stat. § 134-7(c); Kansas, Kan. Stat. Ann. §21-6301(a)(13); and Massachusetts, Mass. Stat. 140 § 129B(1)(iii)—restrict firearm access for individuals who have been committed or are otherwise subject to involuntary treatment for alcohol or drug abuse. Given the data confirming the dangerous combination of firearms and substance abuse, D.C. might consider adopting similar legislation.

Second, the District could expand its prohibition on issuance of registration certificates to felons to include juvenile offenders. Several states—including Florida, Fla. Stat. § 790.23(1)(b); Kentucky, Ky. Stat. § 527.040(3); and Maine, Me. Stat. Tit. 15 § 393—prohibit firearm access for juveniles convicted of crimes that would be felonies had they been committed by adults. D.C. might consider expanding its restrictions to include juvenile offenders.

The Extreme Risk Civil Protection Order Amendment Act is an excellent first step toward strengthening the District's gun-safety laws. I urge the Council to pursue similar legislation that will both keep the city's residents safe and withstand legal challenges. I am happy to answer any questions that the Committee may have.

TESTIMONY OF GEORGE L. LYON, JR. FOR SECOND AMENDMENT INSTITUTE AND ARSENAL ATTORNEYS

Bill 22-0193

Bill 22-0400

Bill 22-0588

Proposed Resolution 22-0552

Proposed Resolution 22-0796

Mr. Chairman and members of the Committee. Thank you for the opportunity to testify on these items.

By way of background I am a registered District of Columbia firearms owner. I am licensed by MPD to carry a concealed handgun and am authorized to carry a concealed handgun in approximately 40 other states. I am also an MPD licensed concealed carry instructor, a Maryland State Police qualified licensed handgun instructor and hold NRA instructor certifications for Pistol, Personal Protection in the Home and Range Safety Officer.

I have taught approximately a quarter of the persons who have applied for or received MPD licenses to carry a concealed handgun. I have more than 850 hours of firearm and self-defense related training covering handgun, rifle, shotgun, tactical medicine, active shooter response, weapons retention and takeaways, empty hand defense, edged weapons, OC spray and other self-defense tools. The majority of my training has been from current or retired police officers and current or former members of the special forces community.

I'd like to offer each member of this Committee and Chairman Mendelson with a complementary admission to my DC Concealed Carry Class. I think it would be helpful for you to know what we are teaching the fine citizens of the District who are exercising their right of self-protection in Washington, DC.

I am a Director of the Second Amendment Institute, a 501(c)(3) entity that seeks to educate the public on Second Amendment issues. I am also an attorney in active practice in the District and the Commonwealth of Virginia with a practice primarily devoted to civil and criminal litigation and firearms related issues. In that capacity I have some serious concerns with the proposed legislation before you.

Let's start with **Bill 22-0193** which would require an individual subject to the temporary protection order to relinquish the individual's firearms. The problem with this Bill is it takes away from the judge the discretion to tailor a temporary protection order to the specific circumstances of the case before her. Plainly in the case of someone threatening physical harm to another it will likely make sense to prohibit the subject from possessing firearms. But these orders are often issued for reasons unrelated to threats of harm. There may be a neighbor dispute where one or more parties feels harassed or some other circumstance that does not rise to a level where there is any reasonable likelihood of physical danger. In such circumstances a prohibition on possession of firearms – which is mind you a Constitutional right – is not a rational remedy. The Council should not pass this Bill which unnecessarily intrudes on the discretion of the District's judges to tailor protection orders to the circumstances of the case.

Bill-0400 suffers a multitude of infirmities.

First, the prohibition on ownership upon grant of a ERCPO. A prohibition on possession is sufficient. If you cannot possess a firearm, you cannot use it. If MPD takes possession of the firearm, any potential for mischief is eliminated. The ownership provision is thus superfluous, unnecessary and unreasonable. Pursuant to *McDonald v. City of Chicago* we are dealing with an express fundamental Constitutional right. To restrict a fundamental right not only must you have a compelling state interest which arguably would be met with a sufficient showing of imminent jeopardy, but you must use the least restrictive means to accomplish that compelling interest. A ban on possession is that least restrictive means.

Moreover, given the prohibition on ownership, assume a protection order is imposed against Subject A and MPD takes possession of his firearms but he still owns them. He is immediately in violation of the order and is thus committing a crime. Even if he takes prompt efforts to dispose of them, it will take time to find a buyer. Yet the Bill still makes him a criminal and specifies that his firearms rights shall be taken away for five years for that violation. Thus, effectively anyone who is the subject of an ex parte ERCPO protection order who owns firearms would likely lose her firearms rights for five years despite having no right to contest the initial order.

Second, and relatedly with respect to an ex parte protective order there is no provision for notification of the subject prior to application and/or grant. This is a serious due process issue. Certainly, circumstances exist constituting an emergency

where an ex parte order might be necessary as an aid to protect an innocent person from imminent serious harm. But, at a minimum an application for an ex parte protection order must contain a showing why it was not possible to provide notice to the subject of the application for the ex parte protection order and the court should only issue such an order where it is persuaded that the circumstances are sufficient to justify entry of the order without notice. Currently there is no such provision in the Bill.

Third, among the factors the Bill provides that the court shall consider is "Evidence of an increased risk for violence including: . . . (F) Evidence of acquisition of firearms, ammunition, or other deadly weapons within six months of the filing of the petition." In other words, the Bill provides that exercising a Constitutional right is evidence of an increased risk of violence. Are you kidding me? I buy thousands of rounds of ammunition yearly. I require my DC Concealed Carry License students to shoot between 150 and 200 rounds to qualify them. I advise them that they should practice at the range at least every month or so. They have to buy ammunition to do so. The act of buying ammunition or even a gun is not an indication of increased risk of violence and should be stricken from the Bill.

Fourth, the evidentiary standard for issuance of an ex parte ERCPO, "reasonable cause" is woefully lax. Reasonable cause means something below even 50 percent plus of the preponderance of the evidence standard in civil cases where money damages are sought. If the Council decides to pass this Bill, and I don't think it should, the standard should be the "Clear and Convincing Standard" the Supreme Court approved of in the context of involuntary commitments in the case of *Addington v. Texas*, 441 U.S. 418 (1979).

Fifth, for the same reasons, the grant of a non-ex parte ERCPO should be based on the "Clear and Convincing Standard" and not the "Preponderance of the Evidence Standard as proposed in the Bill.

Sixth, the Bill is silent on MPD's responsibilities with respect to storing firearms relinquished under this legislation. Many people own firearm collections of considerable value. MPD should be under an obligation to store any firearms received pursuant to this legislation in a manner which reasonably protects them from damage, decay or theft and should be held financially liable for any damage occasioned to such firearms for failure to do so. To that end, MPD should be required to document the condition in which it receives any firearm through photographs, copies of which should be supplied to the subject of any ERCPO.

Seventh, any domestic relations attorney will tell you that protection orders are often used as tools in divorce cases against parties with a fair amount of false testimony supporting such orders. The Bill contains woefully inadequate penalties to deter such misconduct, \$1,000 fine and/or 60 days in jail. That is a slap on the wrist and likely not worth the prosecution even bringing a charge. Providing knowingly false information in a request for a protective order is perjury and should be punished as perjury pursuant to DC Code Section 22-2402. The Bill should so provide if you are inclined to adopt it.

Eighth, this Bill is unnecessary. DC already provides for temporary protective orders and judges have authority to prohibit subjects from possessing firearms. There is no need to layer on another largely flawed procedure.

Moving on to **Bill 22-0588**. This Bill would make it a felony to possess an ammunition feeding device capable of holding more than 10 rounds. These magazines are standard for the majority of duty size and compact handguns sold for personal protection in the United States. For example, one of the most popular handguns sold for home self-protection and carrying concealed in public is the GLOCK 19 nine-millimeter handgun. It is authorized for MPD use and comes standard equipped with a 15-round magazine. These magazines are legal to possess in Maryland, Virginia, Delaware, Pennsylvania, West Virginia, New Jersey, and some 40 other states although new ones cannot be sold in Maryland. Citizens of these states regularly travel to the District for work or pleasure. Occasionally they take a firearm with them, in some cases not knowing District law and in other cases, unaware that they had forgotten to remove their gun from a backpack or other piece of luggage. Often that firearm is equipped with a magazine larger than 10 rounds. This Bill would subject these persons to felony prosecution.

Currently, it is a misdemeanor to possess such a magazine, a penalty equivalent to the penalty for possession of an unregistered firearm or possession of unregistered ammunition. That penalty should not be increased.

Of the three jurisdictions that flatly prohibit possession of magazines capable of holding more than 10 rounds, California, Hawaii (handgun magazines only), and New York, in each state violation of the prohibition is a misdemeanor. Only two states make possession of non-grandfathered unregistered magazines a felony, Connecticut and Massachusetts. Passage of this Bill as written would make DC an outlier.

It is not clear that high capacity magazine possession is a problem in the District. I filed an FOIA with MPD last year asking for data on arrests that involved magazines holding more than 10 rounds. MPD responded that it did not collect any such data.

I have no problem if you want to make it a felony for a convicted felon to possess such magazines. That law would serve a legitimate purpose. Or if you want to make it a felony to possess such magazines in the commission of a crime of violence. I would support such legislation without hesitation as that makes sense to me. What does not make sense is subjecting a person with no criminal intent to a felony for mere possession of an object that is not in and of itself inherently dangerous.

By contract, this Bill proposes to make possession of a firearm with an altered or obliterated serial number by a convicted felon, only a misdemeanor. Are you kidding me again? That to me says you have very mixed up priorities. A felon with a gun is a misdemeanor but an otherwise law-abiding citizen with a 15-round magazine is a felon. Where is the rationality in that?

With respect to **Resolution 22-0552**, I urge you to oppose this resolution. Lawful concealed carriers are not a problem. Statistics from other jurisdictions show lawful concealed carriers are six to ten times more law-abiding than police. Police from other jurisdictions can carry in DC and have not been a problem. Concealed carriers from other states would not be a problem either. I might add we have had concealed carry here for more than three years and to my knowledge not one licensed concealed carrier has been charged with an offense in the District despite all the hand-wringing from this Council and the Mayor when the courts ordered you to allow carry in the District.

With respect to **Resolution 22-0796**, it is ironic that this Council which takes such great offense when Congress tries to tell the city what to do, now tries to tell Virginia and Maryland how to legislate.

Beyond that, however, you fail to understand that we don't have an assault weapons problem – and you continually misuse that term – we have a **violence problem**. If you continue to focus on the **tool** rather than the **why**, we will continue to have a violence problem no matter what you outlaw. I would remind you that the Virginia Tech shooter accomplished his massacre with two handguns, not with what you erroneously call an assault rifle. Charles Whitman 50 some years ago terrorized the University of Texas at Austin with three **hunting** rifles, three handguns and a

shotgun. He did not use an AR-15 or even any semiauto rifle. Right now a serial bomber is terrorizing Austin, Texas.

You focus on the tool because that is an easy scapegoat that makes it look like you are doing something. If you really want to stop the problem, however, you need to focus on the **why**.

I would be happy to answer your questions.



MODERN, SEMI-AUTOMATIC FIREARMS ARE PROTECTED INSTRUMENTS

- Semi-automatic firearms are unquestionably protected by the United States Constitution. As the United States Supreme Court recently re-affirmed in *Caetano v. Massachusetts*, “In *Heller*. . . we found the argument that only those arms in existence in the 18th century are protected by the Second Amendment not merely wrong, but bordering on the frivolous.” *Caetano*, 136 S.Ct. 1027 (2016), quoting *D.C. v. Heller*, 554 U.S., at 582, 128 S.Ct. 2783 (internal quotations omitted). Indeed, the Supreme Court has “held that the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Ibid.* (emphasis added).
- “The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States [].” 10 U.S.C. § 246(a).
- The unorganized militia is expected to be able to muster with bearable arms of the type in common use for lawful purposes. As *Heller* elucidated, the term “bearable arms” necessarily “includes any ‘[w]eapo[n] of offence’ or ‘thing that a man wears for his defence, or takes into his hands,’ that is “carr[ied] ... for the purpose of offensive or defensive action.” 554 U.S., at 581, 584, 128 S.Ct. 2783 (internal quotation marks omitted).
- “[W]hen called for [militia] service [able-bodied] men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.” 307 U.S., at 179, 59 S.Ct. 816. And “[i]n the colonial and revolutionary war era, [small-arms] weapons used by militiamen and weapons used in defense of person and home were one and the same.” *State v. Kessler*, 289 Ore. 359, 368, 614 P.2d 94, 98 (1980) (citing G. Neumann, *Swords and Blades of the American Revolution* 6-15, 252-254 (1973)).
- “That and by whom each and every free able-bodied [] male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five . . . shall [] provide himself with a good musket or firelock...” As explained above, a semi-automatic long gun in today’s terms. (Second Militia Act of 1792.)
- Semi-automatic firearms are the overwhelming favorite of law-abiding gun owners for many practical reasons—and they are in widespread, common use throughout the United States for lawful purposes. “The traditional militia was formed from a pool of men bringing arms ‘in common use at the time’ for lawful purposes like [but not limited to] self-defense.” *Heller*, *supra*, at 2815.



- Just as blogs and websites are protected by the First Amendment, and the Fourth Amendment's shield against unreasonable searches and seizures applies to advanced devices like an iPhone, so, too are modern semi-automatic firearms (like AR-15 platform firearms) and their parts, ammunition, and appurtenances protected by the Second Amendment right to keep and bear arms.

AMERICA DOES NOT NEED MORE CRIMINAL OR GUN CONTROL LAWS

- History shows that gun control is a one-way ratchet, with so-called "compromises" resulting only in more laws that affect law-abiding people and fewer ways to exercise Second Amendment rights.
- The present-day gun control debate is not starting from zero: The baseline is one of nearly a century of piled-on federal regulations and criminal laws. *See, e.g., National Firearms Act (1934); Gun Control Act (1968); Firearm Owners' Protection Act (1986) [including the Hughes Amendment];* and thousands of other state and local laws.
- Murder, manslaughter, and assault are crimes that are illegal everywhere. If a state doesn't have adequate or appropriate mental health codes, then they should address that problem. But law-abiding gun owners will not be bullied by killers or politicians, nor will we give up fundamental individual liberties because of systemic mental health and law enforcement failures and the depraved acts of violent criminals or insane people.
- We don't need more gun control or criminal laws. We need effective security at schools and a robust mental health system. No one knows this better than we law-abiding American gun owners and liberty advocates do.
- Whatever the conversation our country might wish to have about the evils found in human nature, and whatever questions we as a society might have about how to better address those moral and cultural deficiencies, no legitimate answers will be found in additional emotion-driven gun control laws that undermine our American system of ordered liberty and the pre-existing right to keep and bear arms.

Testimony of Leon Spears on Behalf of dcConcealedCarry.com

Bill 22-0193

Bill 22-0400

Bill 22-0588

Proposed Resolution 22-0552

Proposed Resolution 22-0796

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on these items. I hope my testimony today will provide unique clarification on the aforementioned bills and proposals of discussion.

By way of background, I am a registered District of Columbia firearms owner. I was issued by Metropolitan Police Department (MPD) the very first concealed carry permit in the city and am authorized by numerous police agencies across the country to carry a concealed handgun in 41 states. I am currently an MPD licensed concealed carry instructor, a Maryland State Police qualified licensed handgun instructor, and currently hold NRA Law Enforcement instructor certifications in the specific categories of Handgun, Shotgun, and Patrol Rifle. Additionally, I am a law enforcement instructor in the use of non-lethal weaponry—specifically, oleoresin capicum and tactical baton.

I have taught more than fifty percent of the persons who have applied for and/or received licenses issued by MPD to carry a concealed handgun in the District of Columbia. My educational background is in emergency preparedness, critical care nursing, and risk management. For the past ten years, I have averaged more than one thousand hours each year on firing ranges while conducting law enforcement shooting qualifications and/or training. Furthermore, I am an expert on use-of-force engagement and threat assessment.

As the owner and operator of **dcConcealedCarry.com**, I have had the humbling pleasure to have empowered law-abiding citizens with knowledge on the safe and proper handling and use of a concealed carry handgun in Washington, D.C.

Due to the District's special characteristics, applicants must be trained on sensitive places, situational awareness, and self-defense laws specific to Washington, D.C. I would highly suggest Chairman Mendelson as well as all members of this Committee to visit our office and see how the currently instituted policies are improving individuals' lives, not only in Washington, but across the country.

Without further delay, here are my positions on the matters at hand:

Bill 22-0193: "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017."

The "Good": On face value, this bill does something that sounds decent—requires an individual subject to the temporary protection order to relinquish his/her firearms. If a situation is truly dire, MPD should be intimately engaged already.

The "Bad": Lacking a clear and distinct process of how to examine the validity of the accusation prior to relinquishing someone's Constitutional right will lead to robust improper implementation. This bill would allow retaliation and/or other reasons other than personal protection of the applicant to be used, again—without the opportunity of appropriate due process for an accused individual.

Author's Position: The Council should not pass this bill. A court could issue an order during a "final" protection order hearing and afford all parties appropriate due process. Due to the "temporary" status, these orders would require quick implementation and the resources of MPD would also become inundated with cases to process.

Bill 22-0400: "Extreme Risk Civil Protection Order Amendment Act of 2017."

The "Good": On face value, this bill does something that sounds decent—immediately allows MPD to take possession of firearms owned by the accused.

The "Bad": Lacking guidance where, at a minimum, the bill does not provide the making of a good and substantial reason or a showing of cause prior to MPD being allowed to enter one's property is profound.

Author's Position: The Council should not pass this bill. Currently, there is no provision in the bill where any rationale be provided prior to the invasion of someone's property rights. The lack of poor direction of the use of a law enforcement agency without any mandated notification is too far-reaching.

Moreover, then bill states that the act alone of purchasing ammunition is an indication of an increased risk of violence is, again—too far-reaching. There is no process of background checks prior to the purchasing of ammunition; the first action does not guarantee the second action. Furthermore, the real-world, operational means of securing someone's ammunition, in many circumstances, would unduly burden the MPD.

Bill 22-0588: "Possession of Firearm and Ammunition Penalties Amendment Act of 2017."

The "Good": On face value, this bill does something that sounds decent—harshly penalizes an individual with a desire to do mass harm to the public by limiting his/her ability to unleash violence on the public with fewer "high-capacity" devices.

The "Bad": The financial burden placed on law-abiding citizens to make significant purchases to update their magazines would be in the hundreds, if not thousands, of dollars. Furthermore, some firearm manufactures do not make magazines with a limited capacity of ten or less capacity for their firearms. Currently, it is a misdemeanor to possess a high-capacity magazine—a penalty equivalent to illegally possessing an unregistered firearm in the District of Columbia. The sole act of possessing a magazine should not be increased to a felony for otherwise law-abiding citizens. Moreover, a violation of this nature would mean that all Second Amendment rights would be striped from this individual based on current federal law.

Author's Position: The Council should not pass this bill. Washington, D.C. is a place where many citizens either pass through daily or make visit for a once-in-a-lifetime excursion. The possession of a magazine that does not purport to the District's standards is incredibly harsh. This Council could punish persons that have displayed multiple violations of possessing unauthorized devices differently.

PR22-0552: "Sense of the Council in Opposition to Concealed Carry Reciprocity Resolution of 2017."

The "Good": On face value, this resolution does something that sounds decent—restrict others not trained on the local laws from entering the District of Columbia with his/her firearms. The Council has the enormous task of providing guidance on how to protect its residents; this seems to be this Council's intent.

The “Bad”: The typical person with authorization to carry a loaded firearm in public is a highly-vetted person and is law-abiding. This person should not be in violation while in the city if he/she has been properly trained. There is no provision currently that dictates a reciprocity agreement with any state; this could be easily corrected.

Author’s Position: The Council should oppose this resolution. Training is paramount for all parties’ benefit. Washington, D.C. could review states’ training regulations and make determinations on who would be authorized to conceal carry in the city.

PR22-0796: “Sense of the Council Virginia and Maryland Assault Rifle Prohibition Resolution of 2018.”

The “Good”: On face value, this resolution does something that sounds decent—makes a clear position of the Council’s opposition to current positions of the neighboring states’ residents’ allowances in their states. Communication is key to success.

The “Bad”: The actual firearm is not at issue; the person’s behavior is the issue. Furthermore, persons with a nefarious intent is the issue. How other states regulate its residents’ firearm purchases and possession ordinances should be tailored to their legislative landscape and customs.

Author’s Position: The Council should oppose this resolution. The Council should focus on how to promote training and inform its residents on the empowering ability in defending oneself.

I would be delighted to answer any and all your questions.

Kiarra Allen "Extreme Risk Civil Protection Order Amendment Act of 2017," March 21, 2018

Good morning Council Members, Community Stakeholders, Residents of Washington, DC, Students and Staff Members of the District of Columbia Public Schools, and any additional publicly elected officials I may missed. My name is Kiarra Allen and I am an 8th grade student at Browne Education Campus here to testify against the Extreme Risk Civil Protection Order Amendment Act of 2017. This bill **TEMPORARILY** restricts a person's access to guns for a duration of one year if he or she presently poses as a danger to themselves or others. This is problematic for multiple reasons, but I will only speak to one portion of the bill this morning.

The specific portion I take issue with is the duration of a person's access being limited to only one year. If a person has been found guilty to any charge higher than a misdemeanor their firearm should be permanently confiscated and the person should be permanently banned from possessing a firearm. We have to ask ourselves, as a district, as a community and as a society, what do we value? Which brings me to my next point.

An ex-felon is not allowed to become a police officer, why is that? I'll tell you why, because as of 2013 80 percent of people who were once incarcerated return to prison according to the United States Department of Justice. So, please help me make sense, as a 13 year old, how a felon can have their firearm confiscated and then after one year have their gun privileges restored? This bill gives one the idea that they can participate in violent acts against fellow citizens or self-destruct, receive a temporary slap on the wrist for one year, and then return to harming themselves or others especially if they have not received the proper mental health services

Have we not lost enough people to firearms already? According to the Gunviolence Archive.org as of 2018, there have been nearly 12,120-gun homicides this year alone of which 586 represent teens ages 12-17. What do we owe to innocent victims of gun violence such as Bianca Robinson age 18, Zachry Hammond age 19, Jeremy Mardis age 6, Laylah Petersen age 5, Breyona McMillan age 16, Taiyana Thompson age 16 along with the 10 mass school shootings since Columbine such as the students Benton, Kentucky, Lexington Park, Maryland, Sandy Hook, Virginia Tech, Parkland, Florida. Need I go on? Need I continue to name the names of innocent children that were not able to determine their destiny because a firearm determined it for them? Does it have to be one of your loved one's fate that is decided by a firearm before you acknowledge that this is an epidemic that will only continue to get worse with bills such as this one?

So, I ask again, how many more must we lose to a bullet before we realize what needs to be done? Passage of the Extreme Risk Civil Protection Order Amendment Act of 2017 does not give me the reassurance that I need as citizen of this district that I am safe, protected and free to determine my own destiny.

Gun Violence Speech – Laurice Djepeno

Good Morning/Afternoon, my name is Laurice Djepeno and I am a 8th grade student at Browne Education Campus. To start, I would like to thank the councilwomen and men for providing the opportunity for me to speak on such an important topic in teenagers lives today.

Unfortunately, over the past few weeks since the shooting in Parkland, Florida, I have heard one too many times, media reports and outlets referring to teenagers as being “too young” or “too emotional” to speak on the impact law must have on gun violence. I am here to say that just because we do not hold multiple degrees or hold high ranking positions such as a physician or an attorney we have a voice and our thoughts are to be respected because we are the ones living in fear that any day due we could be victims of a mass school shooting, targeted or random community violence. Yet, supposedly we do not know what we are talking about, however our leaders who should know better have been slow to respond. Just this week, there was another school shooting 60 miles from where we sit today and where is the outrage from the adults who are supposed to protect us. We are still WAITING. So, we have no other choice to but to take action ourselves.

Over and over I have heard lawmakers say stricter gun laws will not stop others from owning guns, but how can they be so certain if you have not put in place uniform gun laws around the country. If gun restrictions are not the answer, then I ask you councilwomen and men what is the answer. What can you propose to help me to have faith in our constitution and laws that were designed to protect us as I walk out of here today. I am confident that as educated and experienced as our lawmakers are someone is able to come with more options to help protect our schools and our communities.

On the other hand, I know there are trustworthy and law-abiding citizens that deserve the right to own a firearm without any hassle, but in order make our schools safer so the students of upcoming generations some sacrifices will need to be made. So, I ask of you- Is your desire to own a gun more important than the

lives of the children of this district and for that matter the children of this nation. Furthermore, we as citizens of the District of Columbia need to stop looking to other states and lawmakers and "Be the Change We Want to See in the World." And to do this we need to enact stricter gun laws to prevent the next school setting. I ask you councilwomen and men will you leave this hearing today having done everything in your power to prevent another person's life being lost at the hands of senseless acts of violence. Or will you walk out of this hearing leaving the students of District of Columbia vulnerable to mass casualty.

It seems to me that taking action to curb gun violence is a matter of *common sense* (apologies to Thomas Paine).

I believe the *common sense* solution should be less focused on controlling guns and more focused on controlling gun owners and gun users. The model is already effectively used for motor vehicles.

In most of the world, a person does not have the right to randomly get in a car and do whatever they want with it. There are laws and regulations that promote and enforce the safe use of vehicles. There are a lot of traffic rules and vehicle operators are expected to obey them. They are perceived as *common sense*. For example, even if you approach an empty intersection, with no one for miles around, if there is a stop sign or red light you must stop. Every time. This is understood. This is accepted. There is no debate on whether or not someone should stop at a red light. You don't assume you won't hurt someone. You stop. Sure, scofflaws frequently do not stop and sometimes even the most law-abiding will inadvertently blow through a red light. But when you get a ticket for doing so, you accept it. Again, *common sense*. Same for turn signals, switching lanes, speed limits, proximity to other vehicles, and respect for road signs etc. etc. etc.

There are also regulations regarding vehicle manufacturing and modification to ensure you and everyone has an expectation of safety. *Common sense*. There are also laws regarding what type of vehicles are permitted for use by citizens. For example, civilians are not allowed to own and operate a tank or other military vehicle on a nation's highways. It's dangerous and nobody really thinks it would be a good idea. *More common sense*.

Are there debates on the particulars of all these laws and regulations? Of course, but no rational adult wants to wholly do away with them. To ensure they have an adequate grasp of these laws and regulations and have the ability to safely operate a motor vehicle, drivers are required to obtain a driver's license. To obtain a driver's license, you must go through a probationary/waiting period, demonstrate your ability, and pay fees. (I can envision gun store owners and the NRA providing mandatory training – and collecting fees related to gun training/safety.) Upon getting the license, you are entered into a government database to ensure accountability and enable enforcement. Police can easily identify you by your car registration and driver's license number. This is not oppression. It is *common sense*.

Severely impaired persons are not permitted to obtain a driver's license. Not all disabilities are disqualifying but there are many that limit the ability to safely operate a vehicle. The most common disability is related to eyesight. If you cannot see the road, you cannot negotiate it with a vehicle. *Common sense*. There are no lobbyists arguing that blind persons have a Constitutional right to drive. All accept this, even the blind.

There are also laws restricting drivers from operating vehicles when impaired by drugs, alcohol or other substances. *More common sense*. There are consequences when you do. You could go to jail. You could lose your job. You may be publicly shamed. Your license could be revoked. There are no Congressional lobbyists arguing that there should be NO laws pertaining to driving while drunk or drugged.

In almost every nation, motor vehicle insurance is required. Failure to have insurance has consequences and penalties. This is also *common sense*. You must prove you have a valid license and insurance before

you can own or operate a vehicle. You cannot even rent a vehicle without them. Companies that sell and rent vehicles are required to confirm the potential owner/user is properly licensed and has insurance.

The vast majority of Americans, regardless of political ideology, accepts this huge system of accountability. Why? *Common sense*. Is this system perfect? Of course not, but it has evolved through decades of trial-and-error and many, many deaths.

The Framers of the Constitution did not anticipate motor vehicles. We do not use this fact to ban them or to let them go unrestricted. Instead, we have used *common sense* over the years to find an imperfect balance and mitigate danger to us all. And we're okay with this.

If a recurring problem arose with motor vehicles that endangered us, it would be addressed. Maybe not fast but it would be. There are no organizations advocating that blind persons and intoxicated persons should be allowed drive. There are no politicians running on a platform that calls for drivers to be able to do whatever they want with their vehicles. There are no talk radio hosts claiming a fatal massive car pile-up on a highway is a leftist conspiracy to implement gov't regulations. And no person, even among the less-than-rational, would attach patriotism or "manliness" to an argument about driver's licenses.

The model for *common sense* gun ownership and use is the effective and nearly universal laws, regulation and enforcement that is used for motor vehicles. The federal bureau that regulates Firearms already exists. Many state and local jurisdictions already have ordinances and offices that are charged with controlling weapons. They may not be effective but they don't need to be created, just reformed and improved.

Fees for owner/user licensing and yes, weapon registration, would fund the necessary bureaucracy. Additional funding could come from taxes on sales of ammunition similar to the taxes currently imposed on the sale of vehicle fuels. This is more *common sense*.

If we can all come together and respect vehicle ownership and operation and accountability for the safety of everyone...surely we can establish similar protections regarding guns. This isn't a major leap in logic – just *common sense*. I am a military veteran. I have owned and used guns. I like using guns but I don't like seeing schoolchildren gunned down. These do not contradict each other. And I really, really like the thought of Americans not having to worry about themselves or their children dying in a mass shooting.

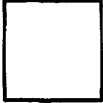
I personally intend to promote *common sense* gun reform widely and consistently by any legal means open to me. This includes only voting for politicians (regardless of party) who are not beholden to the NRA and other major donors who are against gun reform. I will also not vote for politicians who actually believe there is no "gun problem" in the United States.

From: Disqus <notifications@disqus.net>

Sent: Thursday, March 15, 2018 1:35 AM

To: Smith, Nyasha (Council) <NSmith@DCCOUNCIL.US>

Subject: Re: Comment on B22-0400 - Extreme Risk Civil Protection Order Amendment Act of 2017



Dawn

Get the military grade guns out of the hands of the general population, starting with automatic and semi-automatic in DC, and everywhere else in the US. Vote out of office anyone who opposes this. However, don't give our untrained, unskilled judges any more lethal weapons that they can use against minor children or their parents. No more ex par te

(unconstitutional) adjudication of anything, in any U.S. court of law. All ex parte proceedings do is cause endless litigation, and massacres.

Which judges would use this law? Family court or domestic violence unit judges? Ha! These are by far the worst judges; who routinely abuse their discretion, generally lack judicial skills, often have little common sense, Don't give the judges any more "automatic" weapons they can use to cause people to lose faith in the justice system, and to then go and commit atrocities. Must not pass any laws giving any judges the right to confiscate children or property without due process, particularly not our worst ones, in the family courts. They already cause enough tragedies, all throughout the US.

1:35 a.m., Thursday March 15 [Other comments by Dawn](#)

Johnson, Dare (Council)

From: DeNeal, Brittney (DCPS) <[REDACTED]>
Sent: Monday, March 19, 2018 3:47 PM
To: Judiciary (Council)
Cc: Heather Schoell
Subject: Gun Bill Testimony (Written by middle school students in Ward 6)

Good Afternoon,

On behalf of my Journalism students here at Eliot Hine Middle School, my students would like to contribute their opinion on the matter. Below are their responses to each bill. Although my students are twelve and thirteen years old, gun violence and the way the law is altered affects them too.

Bill 22-0193

We, as Eliot Hine Middle School students, believe that it would be an injustice if one party had to give up their firearms, because the other party could take advantage of this. Also, if both parties have problems with each other, both should not have firearms because even if the harassment continues, it is irrational to use a gun to stop it. You also don't know if this is an act of revenge, and if the person who filed a complaint has any sort of newfound mental issues. Or perhaps the complaints are true, but the motives are wrong. One such example of this is when someone may be harassing somebody because they have been goaded into it, or provoked. The other person may want to place an order on another person to get them to lose their job.

I believe that the people should still be able to carry around their guns or personal weapons. I say that because what if someone try to rob the person or invade their homes. At any time somebody can run up on you and try to rob you. You would have no help because you will not have your gun and also people would run away, who would not run if you see somebody pull a gun out in public. People would be terrified.

Bill 22-0400

We agree with this bill because if someone is in extreme danger the person who is harassing them should give up their firearms. It is extremely necessary for the victim to be ensured safety. Also, the person might not only be getting hurt physically but, also mentally. Victim abuse constantly, may cause depression and other mental side effects. As police dive deeper they can't assume the situation is an act of a petty argument, because this will affect the person family and job wise.

Thank you,
Brittney DeNeal

Seventh Grade ELA Teacher
Eliot-Hine Middle School

Johnson, Dare (Council)

From: Mitchell, Katherine (Council)
Sent: Thursday, March 22, 2018 11:50 AM
To: Judiciary (Council)
Subject: Fw: DC Gun Violence

From: Shaun Gonzales [REDACTED]
Sent: Thursday, March 22, 2018 11:44 AM
To: Allen, Charles (Council); Mitchell, Katherine (Council); Cheh, Mary (COUNCIL); Bonds, Anita (Council); Gray, Vincent (Council); Grosso, David (Council)
Cc: Nadeau, Brianne K. (Council)
Subject: DC Gun Violence

I am writing to request that the District step up efforts to stem gun violence and increase gun recoveries. I fully support the Possession of Firearm and Ammunition Penalties Amendment Act of 2017, and the Extreme Risk Civil Protection Amendment Act of 2017 that the Judiciary and Public Safety Committee will consider today.

A young girl was left father-less after the shooting of Andre Junior last week just two blocks from my home in Ward 1 - https://www.popville.com/2018/03/andre-junior-memorial-fund-for-ava/#disqus_thread

And elementary school students were hiding in the closets of their classrooms at Powell Elementary after a shooting at 14th and Upshur nearly killed a mother and pierced a luckily empty toddler seat in the car she was driving - <https://www.popville.com/2018/03/shots-fired-at-14th-and-upshur-st-nw-at-245pm/>

We cannot accept these as normal events, and I want to see my elected leaders proactively seeking creative solutions.

-shaun gonzales
Ward 1 Resident

Community Association for Firearms Education

March 21, 2018

**Testimony of Ricardo A. Royal, National President & Chief Training Counselor of
Community Association for Firearms Education**

Hearing on March 22, 2018

**BILL 22-0193, THE "TEMPORARY PROTECTION ORDER FIREARM RELINQUISHMENT
AMENDMENT ACT OF 2017"**

**BILL 22-0400, THE "EXTREME RISK CIVIL PROTECTION ORDER AMENDMENT ACT OF
2017"**

**BILL 22-0588, THE "POSSESSION OF FIREARM AND AMMUNITION PENALTIES
AMENDMENT ACT OF 2017"**

**PROPOSED RESOLUTION 22-0552, THE "SENSE OF THE COUNCIL IN OPPOSITION TO
CONCEALED CARRY RECIPROCITY RESOLUTION OF 2017"**

AND

**PROPOSED RESOLUTION 22-0796, the "SENSE OF THE COUNCIL VIRGINIA and
MARYLAND ASSAULT RIFLE PROHIBITION RESOLUTION OF 2018"**

Thank you Mr. Chairman for this opportunity to give testimony on these Bills today.

My name is Ricardo A. Royal I am a native Washingtonian, I was born here, went to all grade levels in school including Washington Technical Institute which merged into UDC. My wife and two sons were also born and raised in DC and we still own my family home here. I served the residents and visitors for 18 years as a Paramedic with DC Fire which is today DC Fire & EMS. My parents are from DC. This means that DC is in my blood, it is my home. I will always care about things that impact my DC. Ultimately I was forced to move out of DC because of my inability to conduct Firearms Safety Training Classes in DC. I am also the President and Chief Training Counselor for the Community

Association for Firearms Education (CAFÉ). My life has been a life of providing and promoting safety. One of our goals is to make "Firearm Safety Training as common and available as CPR & First Aid Training". CAFÉ is not politically affiliated with the NRA.

In keeping with our mission the members of CAFÉ are extending to the Members of the DC City Council a private Fundamental Handguns 101 classroom and Range exercise in April 2018. Classroom and range details will be sent to each member directly. We will also be extending the same invitation to Maryland legislators soon.

In my humble opinion DC State Hood and a vote in congress are directly tied to interpretations of the constitution and the Districts history of resistance to the Second Amendment by implementing complex and expensive gun laws for its residents and visitors to the Nation's Capital.

BILL 22-0193, THE "TEMPORARY PROTECTION ORDER FIREARM RELINQUISHMENT AMENDMENT ACT OF 2017" and BILL 22-0400, THE "EXTREME RISK CIVIL PROTECTION ORDER AMENDMENT ACT OF 2017"

We are in complete and total support of firearms being removed from people that should not have them provided that due process is allowed for. Common scenario: officers arrive on the scene of a domestic disturbance or violence call. 9 times out of 10 the male will be directed to leave. Will an inquiry regarding firearms available in the residence or otherwise available to the parties be initiated at that time? What due process review will be afforded the parties prior to the taking? Will firearms be confiscated from both parties? What if the innocent, victimized female has a registered firearm for personal protection – will that be confiscated too? What if the aggressor was the female, will the innocent, victim male's registered firearms be taken too? What will the process be, following seizure, to ensure the seized property will be properly

handled and protected while in custody of DC? What process will be available to both parties to seek return of their seized property?

These laws must include a process by which the firearm(s) can be returned in a timely fashion upon court order that they are to be returned to the owner. The law should also allow for storage conditions and requiring that the firearms be returned in the same condition as they were received or be financially compensated for loss due to damage or theft.

Future Firearms Rights, if the allegations/charges are subsequently dropped, what affect will this have on the individual to purchase firearms in the future--with respect to questions 13 and 14 on the Firearms Registration Application and Concealed Carry Pistol License Application?

BILL 22-0588, THE "POSSESSION OF FIREARM AND AMMUNITION PENALTIES AMENDMENT ACT OF 2017"

How many people have been charged and convicted under the current high-capacity magazine ban? What is the reasoning for recommending an increase of the current penalty? What about the Law Enforcement Officer Safety Act 2004, which allows retired Law Enforcement officers that meet a prescribed national training standard to carry their firearms anywhere in the United States? Many will be carrying magazines with capacity greater than 10 rounds.

It is our opinion that any person passing through the District of Columbia transporting their firearm(s), ammunition, magazine(s) and accessories in accordance with 18 United States Code, 2011 Edition, Title 18 - CRIMES AND CRIMINAL PROCEDURE, PART I – CRIMES, CHAPTER 44 - FIREARMS

Sec. 926A - Interstate transportation of firearms; should be exempt from Unregistered

Firearms, Ammunition and Magazine Laws within the District. Which reads in part “any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle”.

On January 30, 2012 at a hearing for **Bill 19-614, Firearms Amendment Act of 2011** I brought to the attention of this committee at that time the flaws inherent in ammunition-related laws in DC. At that time I ask that the Council “Repeal the current prohibition on **Possession of Unregistered Ammunition** or at best Registered Firearms Owners should be exempt from the law.” Possession of a single component of ammunition (such as an ejected shell casing) makes you a criminal in DC and that is unreasonable. Common inert dummy rounds used in training are illegal to possess if not in a caliber of a DC registered firearm.

It is common for gun owners to join clubs, go to commercial shooting ranges, and participate in shooting sports and other activities with firearms of a different caliber than they have registered with MPD. During different activities Instructors and other club members routinely allow guests and other members to experience shooting many types and calibers of guns. They are not restricted to only what is registered with MPD. Often the only request to try the other-caliber firearm is that the guest furnish their own ammunition. If a DC resident wants to test a firearm (in a caliber other than one currently registered in DC) they would not be permitted to return to their DC home with remaining, unfired ammunition. Similarly, this law and proposed bill prohibits the purchase of bulk ammunition at a quantity discount, unless the individual is able to use all

of the ammunition before returning home. Are residents required to use all bulk purchases of paper goods before they return home? District residents are starting to realize that they too have Second Amendment Rights to enjoy, and that DC laws are imposing unreasonable financial burdens on them more than on any other resident of any other state. And you wonder why Congress is hesitant to act favorably on DC statehood?

PROPOSED RESOLUTION 22-0552, THE "SENSE OF THE COUNCIL IN OPPOSITION TO CONCEALED CARRY RECIPROCITY RESOLUTION OF 2017"

This is less of a surprise than the District not challenging the Appeals Court decision to the US Supreme Court effectively making DC a "Shall Issue state." Now in anticipation of possible National Reciprocity, the Council wants to make it difficult for concealed carry permit holding non-residents to comply with DC's overly restrictive laws regarding magazine capacity and ammunition quantity limitations. These constantly changing impositions are not only difficult to keep track of, they are unduly restrictive, potentially impact an individual's right to adequate self-protection, and impose an unreasonable burden on permit holders traveling between and among Virginia and Maryland (which do not have such restrictive laws), and DC. These laws also increase penalties on unfair laws in retaliation for being forced to comply with nationally accepted standard and a potential new Federal Law that supports Second Amendment Rights.

PROPOSED RESOLUTION 22-0796, the "SENSE OF THE COUNCIL VIRGINIA and MARYLAND ASSAULT RIFLE PROHIBITION RESOLUTION OF 2018"

The DC Council has enough problems with its own laws without trying to assert the Councils "Gun Control" ambitions outside the borders of the District of Columbia. Gun Control has been historically used to keep black people from having guns to protect their families. The key is proper training and safety practices.

The Council should focus on effective, fair and balanced laws that allow District residents and visitors to be safe without "got you" type Gun Laws.

The District of Columbia currently uses poverty as a means of "Gun Control" by creating conditions that increase the basic cost of "Legal Firearm Ownership" compared to Maryland or Virginia (Initially approx. \$250 more). The District of Columbia uses Zoning Laws to constructively keep firearms related businesses from opening in the District. Thus forcing residents to purchase firearms outside of DC and have them transferred to the sole Federal Firearms Licensee in the District, incurring additional expenses. **Is this monopolistic control consistent with prudent antitrust practice?** Because of this unique situation, the sole Federal Firearms Licensee (FFL) is forced to maintain an office in Police Headquarters. **Is this an appropriate governmental restraint on commerce?**

I close by observing that the fastest growing segment of firearms ownership is by women. They are not just purchasing guns, they are also seeking reputable training, and regular practice. All of which is effectively minimized or eliminated by current DC laws. These are tax paying women who simply want to protect themselves and their families. The importance of safety, proficiency, and properly securing their firearms should be expressly encouraged. Unfortunately, they are forced to go out of the district to purchase a firearm; they are forced to transfer firearm purchases through one FFL transferee; and they have no place to practice or receive live fire instruction in DC.

I personally offer my 40 plus years of experience as a Firearms Educator to help this Council achieve common-sense, fair and balanced gun laws and to amend those laws which disadvantage DC residents and may unnecessarily expose DC visitors and those who transit the District to criminal violations.

Sincerely,

Ricardo A. Royal, National President & Chief Training Counselor

Anthony Butler, DC Chapter President

Community Association for Firearms Education (CAFÉ)

GunSafetyCAFE@yahoo.com

410 956-2236

15 Austin Drive

Edgewater, Maryland 21037

Good afternoon Mr. Chairman and the DC Council. I am Anthony Butler, President of the DC Chapter of the Community Association for Firearms Education (CAFÉ). I am a District of Columbia Concealed Carry Permit holder. I am not nor have I ever been a member of the NRA.

Thank you for this opportunity to share testimony on the proposed bills.

Our mission at CAFÉ is to actively provide communities across the country with accurate and effective gun safety training. Our primary concern is for the education and safety of our youth. We strongly feel that knowledge is power, just as ignorance of the law is no excuse. We are a group of shooting sports enthusiasts and professional firearms instructors from a wide variety of economic, social, political and racial backgrounds who are dedicated to making communities safer through better access to ethical firearms education and instruction. We currently have membership in the District of Columbia, Maryland, Northern Virginia and Florida. We are not affiliated with the NRA.

My testimony today will touch on each of the proposed bills and resolutions.

Bill 22-0193, Temporary Protection Order (TPO) Firearm Relinquishment Amendment Act of 2017.

CAFÉ's position on the bill is, while it addresses a needed issue, it creates an issue as well, therefore, CAFÉ cannot support the bill as written.

Issues: If the respondent does in fact possess a firearm(s) they should be removed, however, we object to this occurring without due process.

A common scenario: Officers respond to a domestic disturbance call, and there may or may not be signs of physical abuse, 9 times out of 10, the male would be removed from the residence. (1) Will the registered firearm(s) of the respondent be required to be surrendered at that time? (2) If both parties have registered firearm(s), would both parties be required to surrender their firearms?

The bill also does not address protocols for:

- a. Storage and protection of the surrendered firearms while in the custody of MPD.
- b. The timely return of the registered firearm(s).
- c. The recourse for damages of the surrender firearm(s) while in MPD custody.

d. The future firearms rights of the respondent, if the allegations/charges are subsequently dropped.

Will this former respondent be "red flagged" or absolutely cleared with no record of the incident?

And with respect to questions 3, 13 and 14 on the *Firearms Registration Application, Statement of Eligibility*. What affect will that TPO have on the former respondent's rights to purchase and register *firearms* in the future, in the District? How are those questions answered?

Bill 22-0400, *Extreme Risk Civil Protection Order Amendment Act of 2017*.

CAFÉ's position on this bill run along the same concerns as with B22-0193 and also cannot support the bill as written and recommend a word be removed and replaced. At lines 155, 182, 190, and 214 we recommend the word "*preponderance*" be replaced with "*clear*".

Bill 22-0588, *Possession of Firearm and Ammunition Penalties Amendment Act of 2017*.

CAFÉ's takes issue with the addition of new paragraphs (4), (5), and (6) and questions the necessity of this amendment.

Speaking specifically to paragraphs (4) and (5). It is our position that individuals traveling through the District of Columbia should not be subjected to possible detainment, arrest, or conviction for the ammunition or magazine violation in accordance with 18 USC, 2011 Edition, Title 18 – *Crimes and Criminal Procedure, Part I – Crimes, Chapter 44 – Firearms, Sec. 926A – Interstate Transportation of Firearms: "Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any lace where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly*

*accessible from the passenger compartment of such transporting vehicle: **Provided,** That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console."*

The District of Columbia is already identified as a strict gun control jurisdiction, this amendment does nothing more to enforce laws that are already on the books.

PR22-0552, Sense of the Council in Opposition to Concealed Carry Reciprocity Resolution of 2017

While the Council provides numbers that reflect statistics on gun violence, those statistics makes no distinctions between concealed carry permit (CCP) holders and individuals already prohibited by law from possessing a firearm (convicted felons and convicted domestic abusers).

It's as if this council believes and would lead the public to believe that CCP holders are menaces to society and pose a public safety issue wherever they are as if violence follows them. It is very disappointing that CCP holders are always included with gun violence when stasistically we are the least likely to commit crimes let alone crimes of violence. For the Democratic party to claim itself as the champion of the those discriminated against and those treated unfairly, it is becoming quite evident that we law-abiding gun owners are exempted from the support of this party, but we are the object of your discrimination and gross stereotyping. There are statistics that reflect a decrease in crime in states that allow CCPs. There are statistics that reflect crime and gun violence in citles, like our own where strict gun laws have no effect because the narrative and agenda does not want to make the distinction between those prohibited and those that lawfully possess firearms. To admit that would be to admit the true culprit in this gun violence discussion would be the individual and not the instrument.

Washington, DC is the nation's capital...every U.S. citizen's city. Individuals should feel safe here, but most do not and even its resident's do not and it's not because of guns it's because of crime and the lack, until October 2017 to exercise the right to self-protection and self-preservation. Every visitor

should be able to exercise the same right to conceal carry while visiting the city.

As it stands at this present time, a CCP holder traveling to another state has to verify whether or not his/her CCP will be honored in that state or states they would travel through. These changes occur frequently and would put an otherwise law-abiding citizen in legal jeopardy if a change occurs without their knowledge. H.R. 38 would simplify that and eliminate the guesswork. The CCP holder would be covered by their state issued permit as long as they have a state issued permit and has a valid picture ID.

District voters and visitors would be better served by a resolution that encouraged required training to the same standard of the District and Maryland.

On July 24, 2014, the U.S. District Court for the District of Columbia ruled, in *Palmer v. District of Columbia*, that the District's total ban on the public carrying of ready-to-use handguns is unconstitutional. In its decision, the Court stated, "The Court finds that the District of Columbia's complete ban on the carrying of handguns in public are unconstitutional. Additionally, the injunction prohibits the District from completely banning the carrying of handguns in public for self-defense by otherwise qualified non-residents based solely on the fact that they are not residents of the District."

Passage of H.R. 38 would not supersede state and local concealed carry laws. CCP holders would be subject to the laws of the District of Columbia.

Thank you

Anthony Butler

President, DC CAFÉ Chapter

TO: The Committee on the Judiciary & Public Safety
FROM: Brian Wrenn

DATE: 27-March-2018
SUBJECT: Testimony for 22-March-2018 Hearing

Dear Members of The Committee on the Judiciary & Public Safety:

I submit this testimony in opposition to bills titled **B22-0400** *Extreme Risk Civil Protection Order Amendment Act Of 2017*, **B22-0552** *Sense Of The Council In Opposition To Concealed Carry Reciprocity Resolution Of 2017*, and **B22-0588** *Possession Of Firearm And Ammunition Penalties Amendment Act Of 2017*.

The exercise of the language of B22-0400 would violate the constitutional rights of the target of any such action. *Preponderance* of evidence may suffice for a verdict in a civil trial, but its meaning fails to meet the constitutional requirement of *proof beyond a reasonable doubt*, as required in criminal proceedings. To remove the arms possessed by an individual, whom not deemed guilty of a crime by due process, amounts to a violation of that individual's rights. The duration of a year far exceeds a reasonable length of time for the removal of an individual's arms without a guilty verdict rendered in a trial. If authorities cannot file charges within several days in addition to securing an injunction from the court, no law can have any basis for removal of arms for greater lengths of time.

The DC Council should not adopt any resolution, as B22-0552, in opposition to concealed carry pistol license reciprocity with other states within our union. The District does not consider an automobile driver with a driver's license issued by another jurisdiction in violation of DC traffic law for simply operating a motor vehicle within the city limits of Washington, DC; nor should it. Our laws define possessing a driver's license as a privilege. The United States Constitution defines possessing firearms as a right. This law reduces a basic, natural right to inaccessible by some through no fault of their own. Would the DC Council expect that a trucker who travels all fifty states and delivers much desired goods to Washington, DC to carry fifty-one concealed carry permits? Should such an individual who knows he must travel through dangerous places have to make the decision to travel without a firearm simply to appease this legislative body after already satisfying licensing requirements for the locale in which he resides? Should someone who has suffered domestic abuse or rape and has already obtained a carry license elsewhere have to part with her pistol simply because she wants to accept a new job and relocate to DC? The clear answer to each of these questions is NO. This body should not oppose concealed carry reciprocity, but instead appeal to every state in our union to honor each permit issued under its own regime.

The DC Council should not increase the penalty for possessing high capacity magazines to a felony, as written in B22-588. Rather, the council should not classify possession of a high-capacity magazine as a any crime, whatsoever. One cannot reasonably conclude that someone who gains access to a firearm intent on committing an legal act will give any consideration to the legality of possessing a high capacity magazine before employing the use of one. Furthermore, as evident by the decision not to prosecute, DC considers it tolerable for a national news personality to display one on live television. If such a privileged person can do so to make an argumentative point without repercussions, the common citizen who desires to have one for self defense deserves treatment no different. After only giving casual thought to the matter, one may think a ten round magazine provides more than enough rounds; however, in the midst of a life threatening emergency, particularly when outnumbered, no person depending on a firearm for protection would think of any limit as too high.

Sincerely,
Brian Wrenn



**Written Testimony of Valerie Graff,
Interim Executive Director, My Sister's Place, Inc.
to the Committee on the Judiciary and Public Safety
In Support of The Temporary Firearm Relinquishment Amendment Act of 2017
and The Extreme Risk Civil Protection Order Amendment Act of 2017**

I am Valerie Graff, Interim Executive Director of My Sister's Place (MSP), Washington, DC's oldest domestic violence (DV) shelter. Thank you, Councilmember Allen, and the Committee, for the opportunity to submit this written testimony regarding MSP's enthusiastic support of The Temporary Protection Order Firearm Relinquishment Amendment Act of 2017 and The Extreme Risk Civil Protection Order Amendment Act of 2017. These bills are critical in preventing victims of domestic violence from being further victimized by being injured or killed with firearms obtained by their batterers. We cannot overemphasize the importance of these measures to survivors, and urge this Committee and the Council to pass the two bills.

For over 40 years, *MSP has been an innovator in changing lives*, by providing DC's first hotline and first domestic violence shelter, and through projects such as the Batterers Intervention Group we manage with partner, the Child and Family Services Agency (CFSA). As DC's oldest domestic violence shelter, we have served as a cornerstone of the District's response to this pressing issue since 1979.

MSP also works with survivors in the community and educates first responders, community organizations, DC agencies, and the residents of the District about domestic violence. Our community programs include:

Reaching Independence through Survivor Empowerment (RISE). MSP's transitional-to-permanent housing program helps families fleeing from domestic violence in DC move from crisis and homelessness to safety and stability.

Aftercare. Clients benefit from ongoing contact with case-management staff to support them in their independence, including counseling, referrals to

community-based services, and advocacy as needed, for a minimum of 90 days. Our goal is to provide active outreach and assist clients in building long-term supportive systems within their communities, to reduce the likelihood of future victimization.

Batterer Intervention Group. Through a 24-week intensive program facilitated by licensed clinicians, MSP staff work with fathers who are batterers to provide a safe community place to learn about healthy relationships, become accountable for their own violent and abusive behavior, and learn how to replace violence and abuse with positive and healthy behaviors.

Community Education and Training. Eradicating domestic violence requires a coordinated community response that embraces prevention and intervention. We conduct trainings and events, and work with the Latino community and over two dozen community partners to raise awareness and encourage community engagement, and coordinate services to providers.

During Fiscal Year 2017, MSP directly supported the following:

- **2,287 Hotline callers** were provided crisis intervention and safety planning
- **43 women and 80 children** were provided with emergency shelter and transitional housing
- **1000 case management and counseling sessions** were provided to victims of domestic violence
- **103 women and children** received aftercare services
- **34 families** transitioned from MSP's program into transitional or permanent housing placements
- **20,383 pieces of literature** raising awareness about domestic violence were distributed to the community

For the last five years, we found that more than 90% of families who left our emergency shelter moved on to more stable, safe homes. That means that they didn't fall into homelessness, they didn't return to their batterers, and they were not killed. It is not enough to provide safe housing and supportive services for survivors who escape their abusers; additional protections must be in place for those abusers who are highly persistent, as many are. The law provides for several measures to safeguard domestic violence victims. These can be of great help, but still inadequate for survivors of domestic violence. Many of those who perpetrate acts of domestic violence are primarily motivated by the desire for power and control, and they will often refuse to leave the survivor alone. They use every possible avenue to reassert their power over the survivor. MSP, like every DV organization, devotes a lot of time and effort to working with all of those who reach out to us to develop a safety plan, to help them through the process of leaving their abusers (the most dangerous time for any survivor), and to keeping

the residents of our shelter, as well as the clients in our other programs, safe. One element of keeping them safe is finding out if firearms are in the picture. If they are, then we have to take specific additional precautions at our shelter, and advise our clients to do the same.

Our support for these two bills is strong. Let's look at the bills and how they will support survivors of domestic violence:

The Temporary Protection Order Firearm Relinquishment Amendment Act of 2017 would require a respondent who is served with a temporary protection order (TPO) to relinquish possession of their firearms, and it would prohibit respondents from possessing their firearms for the duration of the TPO. Relinquishing the firearms means that perpetrators cannot use them to commit more crimes against their victims, thus greatly decreasing the likelihood of injury and death. Such a simple process could protect hundreds of innocent and traumatized women and children in the District from the threat of, or actual experience of, gun violence. This bill could prevent the deaths of innocent women and children who are only trying to escape from great danger.

The Extreme Risk Civil Protection Order Amendment Act of 2017 would allow any petitioner, regardless of the relationship to the respondent, to request an ex parte extreme risk civil protection order (ERCPO) if the petitioner can prove to a judge that the respondent poses an immediate and present danger of causing personal injury to self or another. Once an order has been served, the respondent would have to turn in all firearms, ammunition, and gun permits to MDP, and the respondent would be prohibited from obtaining any more of the same for the duration of the ERCPO.

This bill helps survivors to be safer by curtailing abusers' access to guns and ammunition. Further, it recognizes the reality that some survivors are isolated or in contact with only one or two friends or family. That's because so many abusers isolate their victims. Some survivors face families and friends who are unsympathetic to their plight, or who are caring, yet have traditional attitudes towards DV. Survivors need people who are not family and not law enforcement to be able to act on their behalf.

These bills could save lives.

Please consider the story of EB (all names and identifying information have been changed to protect the innocent):

During her initial intake assessment, EB reported that she had expressed ongoing concerns about her and her children's safety at her apartment complex to management and the security team, and she had also filed several police

reports. The abuser had relationships with some of the residents and security officers in the building. He entered her apartment complex with the help of family and friends who also lived there. Thus, her abuser often came to her apartment unannounced, most of the time with different weapons, generally guns: shotguns and pistols. He continually stalked her around the building and parking lot, often forcing EB to take him places by threatening to harm her with whatever gun he was carrying. As she took him to his appointments, he would aim a gun at her while she drove, and made his other guns visible to maintain power and control over her. The abuser seemed to lack regard for anyone's safety, including that of his children.

EB obtained a protection order against her abuser and made numerous attempts to relocate to another apartment. However, due to the extremely limited number of affordable housing units available, she was forced to stay in the same apartment despite the ongoing risks. She had informed the property manager and security team about the protective order, yet her abuser continued to show up at her apartment door, including once after having been escorted up by a security officer. EB continued to be stalked and assaulted by her abuser despite her efforts to inform management and security of the situation. She had also filed police reports after many abuse incidents. Her three young children had witnessed numerous incidents of their father beating up their mother and threatening the family with weapons, including guns. The abuser had bragged about numerous murders he had committed, and had a street name, "The Boogeyman." He maintained his "street cred" by being in the streets at night and making sure people knew that about him.

EB's experiences are sadly not unusual. She took many steps to keep herself and her children safe, yet the protections were not enough to stop her abuser. The bills in front of this Committee will put additional safeguards in place to help families like EB and her children be free from further abuse .

We join with our colleague organizations in our commitment to work with Chairman Allen, Committee Members, and staff to help survivors of domestic violence to live as free from the fear of domestic violence as possible, so that they can heal and rebuild their lives. Thank you for the opportunity to submit this testimony, and I am happy to answer any questions you may have.

Respectfully Submitted,

Valerie Graff

Interim Executive Director

The National Black United Front

Official Testimony
to the
Washington DC City Council
Public Hearing on

B22-0588 - Possession of Firearm and Ammunition Penalties
Amendment Act of 2017

Thursday, March 22, 2018, 11:00 a.m.
Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

**FORWARD EVER
BACKWARD NEVER**

NBUF

NATIONAL BLACK UNITED FRONT

The members and supporters of the National Black United Front (NBUF) give their condolences to all families that have experienced the loss of loved ones due to unnecessary gun violence. We are even more saddened by the internal gun violence within the Black community, because this has had a direct impact on members of our organization. It is tragic when someone's life is taken by the senseless, reckless use of illegal firearms--no one deserves this fate. Again, NBUF offers heartfelt thoughts and condolences to those families and victims of gun violence.

As a result of these tragedies, there is a justified high level of emotion and a sense of mourning throughout our communities. In cities across the country, and even at the federal level, activists and politicians are calling for a change in gun laws and increased penalties for violation of said laws. While the National Black United Front encourages its members to follow all local, state and federal laws regarding firearms, we do not believe that changing laws or establishing stronger penalties is a sufficient answer to the crisis of gun violence. These measures reflect a shortsighted response to a complex social issue.

According to a February 2018 article in the NY Times, over the past 84 years, the following firearms legislation has been enacted:

- The National Firearms Act of 1934 was signed by President Franklin D. Roosevelt after high-profile gangland crimes, including the St. Valentine's Day Massacre in 1929 that killed seven in Chicago..
- The Brady Handgun Violence Prevention Act of 1993 further amended the 1968 law: It required gun purchasers not already licensed to possess a firearm to undergo background checks when buying from sellers licensed by the federal government. However, private transactions were exempted, creating the gun-show loophole.
- The Violent Crime Control and Law Enforcement Act of 1994 banned the possession, transfer or domestic manufacturing of some semiautomatic assault weapons for 10 years. Known as the Federal Assault Weapons Ban, it expired in 2004, despite efforts by gun control advocates to extend it.
- In 2008, Congress passed the NICS Improvement Amendments Act after a shooting at Virginia Tech a year earlier had killed 33.

As one can see, this is not a new issue. Historically speaking, neither increasing penalties nor making it more difficult to obtain a weapon have curtailed mass shootings, and none of these policies have made communities more safe, in general. It is far more likely that amending this bill to increase penalties will have an adverse impact on Washington DC's Black community, similar to that which we have already seen in the "War on Drugs."

According to the data published by the DC Department of Corrections between 2016 - 2017, 89 percent of the inmates in Washington DC's Department of Corrections are Black, while only 47 percent of Washington DC's population is Black. The National Black United Front contends that this disproportionate ratio is a direct result of racially biased policing practices such as "stop and frisk," "

jump outs,” and racial profiling, in addition to aftermath of the FBI’s Counterintelligence Program, and the white supremacist underpinnings of these carceral institutions. Amending the bill to increase penalties will only serve to further entrench Black and Latino people in the criminal justice system. It will become yet another barrier to the timely and successful re-integration of Black and Latino former offenders back into mainstream society.

Crime in the Black community is not linked to lack of gun control. It is linked to inadequate resources related to housing, education, health, financial stability and overall quality of life.

In april of 2016, the Washington Post published an article stating that high levels of lead are linked to brain damage and developmental problems, including impulsive behavior, poor language skills and trouble retaining new information. Two of the three schools found to have high levels of lead, were in predominantly Black communities.

In January of 2017 the Washington City Paper published an article discussing the lack of quality grocery stores, food deserts, in the larger Black communities of Washington DC. The article stated that a lack of access to quality food choices, increases the rate of poor nutrition of residents. This will in turn lead to poor mental and behavioral health, which is directly connected to increased crime.

In April of 2018, the Washington Post published an article about Anacostia High School teachers and students walking out and canceling classes due to not having operational toilets. Anacostia High School, which is located in the Black community, where nine out of ten students are considered at risk. Additionally, 40 percent of the students receive some form of special education, are in a wheelchair or require assistance in using the restroom. Not having access to quality education can lead to higher rates of incarceration as well.

The above social issues have been cited because they all are key factors as to why 89 percent of the DC Department of Corrections inmate population is Black. NBUF believes that the most effective approach to cutting down crime in D.C. would be to direct more legislative resources towards the above stated issues, rather than increased policing and harsher penalties. Furthermore, it is unlikely that these proposed amendments will deter crime, simply because many DC residents will be unaware of them. It is for all of these reasons that we vote *no* to the amendments of increased penalties set forth in Bill 22-0588.

Forward Ever, Backwards Never
Central Committee
National Black United Front

Council of the District of Columbia

John A. Wilson Building

1350 Pennsylvania Ave. NW

Washington, DC 20004

Greetings City Council Members,

My name is Melissa Irby and I am writing to submit my comments for consideration in reference to the Judiciary & Public Safety Public Hearing held on March 22, 2018. Specifically, I am writing to voice concerns for:

B22-0588 - Possession of Firearm and Ammunition Penalties Amendment Act of 2017, and

B22-0193 - Temporary Protection Order Firearm Relinquishment Amendment Act of 2017

B22-0588 - Possession of Firearm and Ammunition Penalties Amendment Act of 2017

My concerns arose while listening to the hearing where one of the witnesses made a salient point about the amount of ammunition an individual could potentially purchase and the reasons behind it. As a supporter of 2A and visitor of shooting ranges there is the potential that I could purchase a large amount of ammunition for practice. Will this become illegal? Will we soon have to register when we buy ammunition? Slippery slope concept here. When laws are conceived and enacted in response to community concerns, history has shown that without vigilance, rights can be infringed upon.

B22-0193 - Temporary Protection Order Firearm Relinquishment Amendment Act of 2017

Very simple point here: Do the laws on Domestic Violence and firearms also include police officers? Not only their personal firearms if they're DC residents, but are their MPD issued firearms being removed and they reassigned until the matter is sorted or properly adjudicated? If not then this oversight needs to be corrected posthaste. As a citizen, I want to ensure that people who have jobs as police officers are treated the SAME under the law as I, Jane Q. Citizen.

Thank you for considering my comments.

Melissa Irby

Testimony of the
DOMESTIC VIOLENCE LEGAL EMPOWERMENT AND APPEALS PROJECT (DV LEAP) on the
"Extreme Risk Civil Protection Order Amendment Act of 2017," Bill 22-0400, and the
Temporary Protection Order Firearm Relinquishment Amendment Act of 2017," Bill 22-0193
submitted to the
Committee on the Judiciary and Public Safety
March 30, 2018

Introduction

DV LEAP, now in its 15th year, makes the law work for survivors of domestic violence by appealing unjust trial court outcomes and defending protective rulings on appeal; advancing legal protections through expert appellate advocacy; training lawyers, psychologists, and judges on best practices; and spearheading domestic violence litigation in the Supreme Court. Since 2004, DV LEAP has taken 28 appeals in the D.C. Superior Court, winning 16 of them; has provided appellate advocacy for survivors and their children in another 39 cases in 21 states; and has submitted *Amicus* briefs in 10 Supreme Court cases.

I offer this testimony because of my recent experience with a civil protection order ("CPO") case, in which the abuser used his lawful firearm to terrify my client, who he had physically and psychologically abused and stalked for ten years. After the final incident in which he "played" with the gun for an hour, then pointed his fingers at her as though shooting her, she took their two children into hiding with her, and remains so; however, the abuser announced that he knows where they are staying. While the CPO entered by the D.C. Superior Court contains boiler-plate language about relinquishing firearms, the court did not specifically admonish the Respondent in this regard, nor was it made clear how a failure to relinquish his firearm would be enforced. Although the client has met with the MPD's Gun Unit, to my knowledge, to this day, the Respondent still possesses his gun. Moreover, even if he did turn in his gun to the MPD, his father, who has sided with his son against my client in court, also owns a gun, and, to my knowledge, has received no warnings about making his own gun available to his son.

DV LEAP's position, in a nutshell, is that - regardless of federal or state firearms prohibitions, there appears to be no meaningful procedure in the District of Columbia for ensuring that relinquishment orders are actually acted upon. Barring another court action by my client, who is at risk and in no position to take the abuser back to court, her abuser will keep his firearm, and will continue to pose a lethal threat to her and the children, despite the legal prohibition.

Bill 22-0193

DV LEAP strongly supports the Temporary Protection Order Firearm Relinquishment Amendment Act of 2017; adding the firearm prohibition to TPOs (as well as CPOs) makes eminent good sense. However, this Bill does nothing to address the lack of enforcement of existing prohibitions for firearm possession by individuals subject to CPOs (described above). It will therefore not advance safety without the addition of explicit relinquishment

provisions, along the lines of those contained in Bill 22-0400, *and* with the additional provisions urgently recommended herein. These processes need to *not* place the burden of enforcement on an at-risk Petitioner. *See infra*.

Bill 22-0400

Support

DV LEAP supports the intentions behind this Bill, and wholeheartedly agrees that public safety requires a legal avenue for removing firearms from dangerous individuals. We are especially supportive of the proposal's breadth regarding the population of Petitioners eligible to use this intervention, as limiting it to law enforcement and/or family members would cripple its effectiveness. As described above, family members are most at risk and likely to be most afraid to take a dangerous individual to court. And we do not believe that law enforcement, over-worked and stretched thin as they are, are likely to initiate petitions in court for firearm removal. Our experience in domestic violence cases suggests that police do not always take seriously the concerns of family members and others about future dangerousness, as opposed to past crimes. Insofar as the purpose of this Bill is to enable teachers, classmates, neighbors, and others who see an individual possesses a gun and has indicated dangerousness, to intervene before something terrible occurs, it is critical to *not narrow* the class of Petitioners to exclude such individuals.

Recommendations

DV LEAP does have a number of strong recommendations for additions, based on the recommendations of national experts in "smart gun laws" and "risk-based firearm policy," focused primarily on the efficacy of the relinquishment provisions.

1. **Ensuring *actual* relinquishment is critical – police must be required to proactively demand relinquishment of guns for *contested* ERCPOs as well as *ex parte* ERCPOs.**

As the tragic Prince Georges County case recently profiled in the media demonstrates, domestic abusers with firearms are often lethal. The shooter in this instance had been ordered to give up his guns three times by judges; but nothing happened when he didn't. As a result, a brave police officer and the shooter himself (father of children) died.

https://www.washingtonpost.com/local/public-safety/outpouring-for-police-officer-killed-protecting-woman-he-was-exceptional/2018/02/22/972d708c-17dd-11e8-92c9-376b4fe57ff7_story.html?utm_term=.5e0f424ee21c

There are several measures which have been recognized as providing more realistic means of removing guns from dangerous individuals.

- a. **Extend police role to contested hearings**

While Section 905d (b) of Bill 22-0400 provides for police to serve *ex parte* orders on respondents and to "request" their firearms at that time, it says absolutely nothing about ERCPOs issued after a contested hearing. There is every reason to believe that many of these orders will be issued at contested hearings, in which case police will not be involved in serving the orders (since the respondents will be issued the

order while they are present in court). The same is true for the typical regular CPO proceeding. For all such contested hearings, there must be reliable ways to ensure that respondents *go home from court and turn in their guns*. Several such measures are detailed below.

b. Require Respondents to return to court to certify their relinquishment.

The California law on which Bill 22-0400 was modeled has been criticized by experts precisely because it lacks the “teeth” necessary to ensure actual relinquishment. The Law Center to Prevent Gun Violence describes the system incorporated in Bill 22-0400 as “essentially . . . an honor system” which depends on respondents’ choice to obey court orders to relinquish their illegal firearms to work. The Law Center to Prevent Gun Violence, *Keeping Illegal Guns out of Dangerous Hands: America’s Deadly Relinquishment Gap* (Sept. 2016), available at <http://lawcenter.giffords.org/wp-content/uploads/2016/09/Keeping-Guns-Out-of-Dangerous-Hands.pdf>, p. 8. Ironically, the same report notes that California’s domestic abuse law contains *far more effective* relinquishment provisions:

When a court issues a restraining order against a domestic abuser, state law requires the abuser to provide written receipts to the court verifying that he or she actually sold or transferred all firearms within specific time frames. The law also authorizes courts to issue search warrants to recover illegally owned firearms from abusers who fail to comply.

Id. The Law Center to Prevent Gun Violence urges California, and all states, to place the burden on the respondent to **prove his or her compliance** with a relinquishment order, by bringing a receipt showing the disposal of the firearms, rather than placing the burden on an at-risk individual to return to court to **prove his non-compliance**.

A similar means of ensuring relinquishment has been suggested by David Keck, Director of the National Resource Center on Domestic Violence and Firearms.¹ He recommends that courts be required to hold a “compliance hearing” within a few days of the order to relinquish firearms. Such hearings could be held without Petitioners’ presence required.

DV LEAP strongly urges that the D.C. Council learn from the experiences of other states and national experts - and adopt a statute that will have some teeth and a simple means of ensuring compliance and governmental follow-up. Although it is conceivable that requiring a receipt could be subject to fraud, it appears to have been remarkably effective in California, as applied to domestic violence cases. See *Keeping Illegal Guns out of Dangerous Hands*, *supra* at 8 (study found that after adoption of relinquishment law, domestic violence calls regarding firearms to law enforcement decreased by 44%, while other domestic violence calls increased).

¹ Electronic message from David Keck to Joan Meier, March 22, 2018.

- c. **Require police to conduct a search if respondents fail to turn over their firearms.** As drafted, Sec. 905d (b) only requires law enforcement officers to “request” relinquishment of firearms. The Bill should also *require* a search when that request is declined. It should specify that such a search is lawful, once a fair hearing gives rise to a relinquishment order. See Prosecutors Against Gun Violence & The Consortium for Risk-Based Firearm Policy, *Firearm Removal/Retrieval in Cases of Domestic Violence* (Feb. 2016), available at <http://efsgv.org/wp-content/uploads/2016/02/Removal-Report-Updated-2-11-16.pdf> at p. 34 (describing Delaware statute which permits courts to order police to search and seize firearms under certain conditions).
- d. **Warrants for enforcement should not depend on a private citizen’s return to court.** Section 905d (d) allows a court to issue a warrant if a petitioner proves by a preponderance of the evidence that the respondent continues to possess firearms or ammunition prohibited by a previously issued ERCPO. This return to court, after an initial proceeding, is far too great a burden to ask of any private citizen, whether a teacher, classmate, neighbor, or direct victim of the respondent’s. Going through court proceedings with dangerous individuals is extremely stressful and potentially traumatic, especially for someone who has already been traumatized by that individual’s violence. It is not reasonable to expect a private citizen to do this *twice*, when they have already fulfilled the law’s requirement of proving a respondent’s dangerousness and possession of a firearm. Therefore, once an order has issued, it should be incumbent on the court and law enforcement to ensure compliance – either by requiring the respondent to present a receipt as discussed in para. c above, or by automatically searching and seizing prohibited firearms when no relinquishment to law enforcement has occurred within a specified short deadline.
- e. **Enforcement where new conviction renders possession of firearm unlawful** Recent California law (Proposition 63, effective January 1, 2018) requires defendants convicted of firearm-prohibiting crimes, including domestic violence offenses, to provide proof that they sold or transferred their firearms within specified timeframes after conviction. It also *requires assigned probation officers and courts to verify that the defendant complied* with this requirement before final disposition of the defendant’s case, and authorizes the court to issue search warrants to recover illegally retained firearms from defendants who fail to comply. *Domestic Violence & Firearms in California*, <https://www.lawcenter.giffords.org/domestic-violence-and-firearms-in-california>.

DV LEAP recommends the addition of similar language in this Bill.

- 2. **Guidance to courts regarding risk factors should include empirically proven domestic violence risk assessment factors.**

In Section 905b(c), the Bill requires courts to consider a list of factors relevant to a respondent's dangerousness. In subsection (c)(5), the Bill lists specific factors purportedly related to "an increased risk of violence." This list should include, at the least, the top factors in the well-established lethality risk assessment developed by Jacqueline Campbell for domestic violence situations. Those factors include past or threatened use of the gun against the victim, past strangulation, recent separation of the parties, extreme jealousy and possessiveness, suicidal ideation, and a pattern of coercive control, among others. <https://www.dangerassessment.org/DA.aspx> These are far more pertinent to the lethality risks faced by intimate partners than most of the other listed factors.

3. **The legislation should require all background checks to include review of CPO/TPO registries, since current practices are spotty with regard to inclusion of CPOs in federal background check databases.**
4. **The legislation should make clear how the new law interacts with regular CPOs, by**
 - a. **Incorporating identical firearm relinquishment procedures (including the additions recommended above) in the IntraFamily Offenses Act;**
 - b. **Clarifying that if a CPO is already in effect, the Petitioner does not need to separately obtain an ERCPO to ensure relinquishment of a respondent's firearms, which is automatically mandated by D.C. and federal law once a CPO has been issued; and**
 - c. **Clarifying that an individual eligible for a CPO under the IntraFamily Offenses Act may proceed under either that Act, or under the "Extreme Risk Civil Protection Order Act," if the only remedy they seek is a firearms prohibition.**
5. **The new protective orders should be given a different name to minimize predictable confusion and clearly distinguish the new orders from existing domestic violence Civil Protection Orders under the IntraFamily Offenses Act. A better title for the new law would be one which mentions gun violence, e.g., Gun Violence Protection Act.**

Thank you very much for your consideration of the foregoing recommendations. DV LEAP stands ready to assist in any way necessary going forward.

Submitted by:

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of Mayor Muriel Bowser



Public Hearing on

**Bill 22-588, the "Possession of Firearm and Ammunition Penalties
Amendment Act of 2017"**

**Bill 22-400, the "Extreme Risk Civil Protection Order
Amendment Act of 2017"**

**Bill 22-193, the "Temporary Protection Order Firearm Relinquishment
Amendment Act of 2017"**

**Proposed Resolution 22-552, the "Sense of the Council in Opposition to Concealed Carry
Reciprocity Resolution of 2017"**

**Proposed Resolution 22-796, the "Sense of the Council Virginia and Maryland Assault
Rifle Prohibition Resolution of 2018"**

**Testimony of
Kevin Donahue**

**Deputy City Administrator
Deputy Mayor for Public Safety and Justice**

**Committee on the Judiciary and Public Safety
Council of the District of Columbia
The Honorable Charles Allen, Chairperson**

**John A. Wilson Building
Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004
March 22, 2018
11:00 a.m.**

Good morning, Chairperson Allen, members, and staff of the Committee on the Judiciary and Public Safety. I am Kevin Donahue, Deputy Mayor for Public Safety and Justice, and I am joined by Peter Newsham, Chief of Police of the Metropolitan Police Department.

We are here to testify in support of Bill 22-588, the "Possession of Firearm and Ammunition Penalties Amendment Act of 2017," which was introduced by Mayor Muriel Bowser. We also will speak in support of Bill 22-714, the "Bump Stock Prohibition Amendment Act of 2018," which was also introduced by Mayor Bowser, but which I understand was not added to today's hearing because of Council procedural rules. We will also speak to two other bills that propose reasonable policies for keeping firearms away from people who may use the weapons to harm themselves or others. Our overriding concern in analyzing each of these bills is the protection of our residents' safety, while also ensuring all constitutional requirements are met.

Promoting DC Values through Sensible Gun Laws

While there has been a great deal of attention paid to the horror that happened in Parkland, Florida, our own city has known the horror of gun violence for decades. Far too many District residents have lost someone because of guns and suffer a lifetime of trauma from that pain. As a nation, we mourn the massacre of students who thought they were safe at school and we remember Columbine, Newtown, Virginia Tech, and now Parkland. But as a city, we should not forget the names of our own young people whose lives were tragically cut short by gun violence. We need to remember Steven Slaughter, age 14; James Colter, 17; Davon Fisher, 17; Chicano Phillips, 18; and Paris Brown, 19. These five teenagers were killed this year alone – struck down by bullets. We, as a city, need to honor their memories by recommitting ourselves to preventing gun violence.

Our collective actions as a government to prevent gun violence take many forms. This means funding our forensics lab to expand ballistics testing. It means working closely as a unified justice system to fairly prosecute gun crimes. It means surrounding families with quality education, recreation, and healthy communities. It means directly engaging with individuals considering violence as a solution. It means addressing the trauma, anger, and lack of opportunity that create the conditions from which violence arises. It is committing ourselves to all of this and not being enticed by the idea that any one action will end gun violence.

Our purpose here, however, is more focused. Today, we focus on one specific issue that cities across the country are facing: how to keep guns out of the hands of people who are likely to use them to commit acts of violence.

We commend the activism and passion of students who have become extraordinary advocates for demanding responsible gun control legislation nationwide. But we also must recognize and honor the work being done here in the District by our own students, community members, nonprofit organizations, and advocacy groups. We share their commitment to making all our residents feel safe no matter where in our city they live. While some federal officials have latched on to a reckless scheme of turning teachers into armed guards, the District is committed to discussing real common sense solutions to stopping gun violence.

This weekend, the District will host several hundred thousand people who are coming here to tell Congress that enough is enough. We need sensible gun control laws at the federal level. But if Congress refuses to listen, then it is up to the District and other states to take the lead.

Prohibiting Lethal Weapons and Bump Stocks

I now turn to the two bills introduced by Mayor Bowser, Bill 22-588, the “Possession of Firearm and Ammunition Penalties Amendment Act of 2017,” and Bill 22-714, the “Bump Stock Prohibition Amendment Act of 2018.” Both bills focus on reasonable gun control and accountability for gun trafficking.

In 2009, Council enacted legislation to model certain parts of District firearms laws after the federal law. This allowed for charges to be filed in the D.C. Superior Court because it can be challenging to bring low-level federal cases in the U.S. District Court. Two provisions of Bill 22-588 are a continuation of this effort. The bill prohibits the possession, sale, or disposal of a stolen firearm or ammunition or the possession of a firearm whose serial number has been removed, obliterated, or altered. The proposed penalty for such offenses – not less than two years and not more than five years – reflects the gravity with which we hold illegal gun trafficking. The bill adds an enhanced penalty for possessing firearms with intent to sell, which is another typical gun trafficking offense, of not less than two years and not more than 10 years. Collectively, these will support police efforts to ensure that when they are able to identify someone trafficking in illegal firearms, the District can hold the offenders accountable.

The bill creates a new misdemeanor for felons in possession of ammunition and creates an enhanced penalty for possession of a high-capacity magazine, increasing it from less than a year to not more than five years. The increased penalty for possession of high-capacity magazines reflects the ability of these weapons to inflict a large number of casualties – something that has become more common at shootings in the District over the past several years.

Additionally, the bill adds new criminal gun offenses to the District’s existing immunity provisions that are available to persons voluntarily surrendering stolen guns or guns with obliterated serial numbers – the two new offenses I just discussed. Our intent is to encourage the voluntary surrender of these illegal guns so that they are taken off our streets. Finally, the bill denies civil penalties or administrative sanctions for convicted felons transporting unregistered guns or ammunition. These types of sanctions originally were created to exempt from criminal liability those non-residents traveling through the District with unregistered firearms or ammunition; however, a felon in possession of an unregistered firearm should not be entitled to this exemption.

Although Bill 22-714 is not a subject of this hearing, I do want to highlight it to make clear that Mayor Bowser believes it is important to amend District law to ban the possession of bump stocks. As we saw in the horrible massacre in Las Vegas, bump stocks can lead to a massive number of casualties by substantially increasing a weapon’s rate of fire – sometimes up to as many as 400 rounds a minute. The bill prohibits the possession of bump stocks and any other type of item that simulates automatic or machinegun fire.

The Mayor's proposal to ban bump stocks mirrors similar efforts in California, Massachusetts, New Jersey, Washington, and Florida. Several cities have adopted a ban, including Denver, Cincinnati, and Columbia, South Carolina. Finally, on March 19, the Maryland legislature approved a similar law that Governor Larry Hogan is expected to sign.

I'd like to address an argument that there is no need to ban bump stocks in the District because they're either not a problem here or we can just wait for federal law to be changed. Because bump stocks are currently legal to possess, MPD does not have data on how many may be in the District. However, we know the lethal harm that bump stocks can inflict on victims. It would be irresponsible for us to simply wait until there's a mass shooting in the District with a weapon outfitted with a bump stock, before taking action.

A few weeks ago, the U.S. Department of Justice stated its intent to propose a rulemaking to ban bump stocks. While we support this belated action to regulate guns at the federal level, it is impossible to predict when this rulemaking would take effect and the outcome of inevitable litigation. We don't need to keep waiting for the federal government to take action; the District can lead by taking action now.

Keeping Firearms Away from Dangerous Individuals

The two Council bills, B22-400, the "Extreme Risk Civil Protection Order Amendment Act of 2017" and B22-193, the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017," have the goal of keeping firearms out of the hands of people who may use them to cause harm, whether to themselves or to others.

Bill 22-400 establishes two new types of "Extreme Risk Civil Protection Orders" or ERCPOs. Unlike existing protection orders in the District, which generally are limited to petitions filed by domestic violence victims, ERCPOs can be filed by anyone with personal knowledge of another person's danger to themselves or others, and their possession of, or access to, firearms.

We support the intent of such proposals, known as "red flag" laws, which have been enacted in several states, including Connecticut, California, Indiana, Massachusetts, Oregon, and, most recently, Florida, and are also under consideration in dozens of other jurisdictions. Our understanding is that "red flag" laws have withstood constitutional challenges in California and Indiana state courts and have been credited with preventing one suicide for every 10.5 guns seized in Connecticut. These laws are narrowly crafted to address immediate and present dangers by temporarily removing firearms from dangerous persons in order to prevent harm to those persons or others. They are also sparingly used: in California in 2016, the year the law first went into effect, 84 "red flag" orders were issued; last year, that number increased to 104. And in Connecticut, which has had these laws in place for almost 20 years, only about 1,500 "red flag" orders have been issued in that entire time.

The "red flag" laws are undoubtedly complicated and we want to work closely with the Committee, the Attorney General, and the D.C. Superior Court to ensure the District's legislation meets both constitutional requirements and practical concerns. At the macro level, we believe these protection orders would allow family members, police officers, or any other person with

personal knowledge of specified dangers to obtain prompt judicial review of temporary firearms removals in narrowly crafted circumstances.

B22-193 requires the relinquishment of firearms by anyone who is the subject to a temporary protection order (TPO). Under current law, a TPO may be filed by a person alleging they are the victim of interpersonal, intimate partner, or intrafamily violence; stalking; sexual assault; or sexual abuse. A court may issue a TPO when it finds the petitioner to be "immediately endangered" by another person.

We support this bill as an important tool that can keep guns out of the hands of abusers. But we have concerns about how the TPO would impact the relinquishing of illegal firearms in a person's possession. We suggest the Committee consider merging this proposal with the extreme risk civil protection order bill so they can supplement each other and increase the protections offered to the victims of violence while at the same time complying with constitutional requirements.

Working Together to Make Our City Safer

We look forward to working in close cooperation with the Committee and full Council, the Attorney General, advocates, and our residents – especially those who have been most affected by gun violence – to improve our ability to protect our city from firearms, while still adhering to the mandates of the *Heller* litigation and its progeny. We believe that by enacting the bills discussed today, including the Mayor's bill to ban bump stocks, the District will increase the safety of our residents

I want to end with a quote from Marjory Stoneman Douglass, whom the school in Parkland, Florida is named after:

"Be a nuisance when it counts. Do your part to inform and stimulate the public to join your action. Be depressed, discouraged, and disappointed at failure and the disheartening effects of ignorance, greed, corruption, and bad politics – but never give up."

I applaud all the students and activists who stand up against those members of Congress who seem determined to prevent change. I urge them to never give up their fight. We support them, we stand with them, and we are inspired about the future that they are ushering in.

Thank you for the opportunity to testify today. I welcome any questions.



**Statement of Loren L. AliKhan
Solicitor General
Office of Attorney General for the District of Columbia**

Before the

**Committee on the Judiciary and Public Safety
The Honorable Charles Allen, Chairperson**

Public Hearing

**B22-193, "Temporary Protection Order Firearm Relinquishment Amendment
Act of 2017"**

B22-400, "Extreme Risk Civil Protection Order Amendment Act of 2017"

**B22-588, "Possession of Firearm and Ammunition Penalties Amendment Act
of 2017"**

**PR22-0552, "Sense of The Council in Opposition to Concealed Carry
Reciprocity Resolution of 2017"**

**PR22-0796, "Sense of The Council Virginia And Maryland Assault Rifle
Prohibition Resolution of 2018"**

March 22, 2018

11:00 am

Room 500

**John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, District of Columbia 20004**

Greetings Chairman Allen, Councilmembers, staff, and residents. I am Loren L. AliKhan, and I have the privilege of serving as the Solicitor General at the Office of the Attorney General ("OAG"). I am pleased to appear on behalf of Attorney General Karl A. Racine to testify in favor of the goals and objectives found in each of the bills on the agenda today. The Attorney General is currently hosting the National Association of Attorneys General ("NAAG") Eastern Regional Conference, which is focused on effective strategies for reducing violence, or he would be here personally. I will note that the NAAG conference includes subject matter experts from around the country discussing trauma reduction, violence prevention, restorative justice practices, the use of specialty courts, and decreasing recidivism. Moreover, the director of the Los Angeles Mayor's Office of Gang Reduction and Youth Development will offer the opening keynote address. Los Angeles is one of the few large urban jurisdictions to see violent crime and retaliatory crime go down, in large part due to the work of that office. The Attorney General asked that I begin by thanking the Metropolitan Police Department for their engagement with the officials from Los Angeles, and thank the Committee on the Judiciary and Public Safety ("the Committee") for their participation at the conference.

Since coming into office, Attorney General Racine has made the public safety of District residents his highest priority. A key component to achieving this priority is ensuring the District has common-sense gun laws to combat the proliferation of illegal firearms. As we have seen far too often, no place is safe from gun violence. Our places of worship, workplaces, and schools around the country are scenes to unconscionable gun crimes. The Attorney General strongly

believes that we must to all that we can to prevent gun violence while also respecting the Constitution. Last year, Attorney General Racine led a coalition of 12 attorneys general to defend California's ban on large-capacity ammunition magazines. These large-capacity magazines, which hold more than 10 rounds of ammunition, are disproportionally used by mass shooters to kill and injure large numbers of people quickly. Relatedly, the Attorney General joined a bipartisan coalition to urge Congress to regulate "bump stocks," a device that a gunman in Las Vegas used to modify semi-automatic rifles to kill 58 innocent people and injure hundreds more. Bump stocks increase the ability of an otherwise lawful semi-automatic rifle to fire like a fully automatic weapon and may be used to evade machine gun laws that are currently in place. Attorney General Racine will continue to advocate for reasonable gun regulations that increase public safety and save lives. It is in this spirit that OAG offers its support today.

My OAG colleagues performed a preliminary legal review of Bill 22-193, Bill 22-400, and Bill 22-588. During that review, some issues requiring additional clarification were identified. Our attorneys also identified some points that may strengthen aspects of the bills, particularly with regards to protecting the public in situations involving domestic violence. As the District's attorneys, OAG is happy to share our assessment with the Council and Committee's staff.

I greatly appreciate the opportunity to share Attorney General Racine's support of the goals found in Bill 22-193, Bill 22-400, Bill 22-588, as well as Proposed Resolution 22-552 and Proposed Resolution 22-796 for the public record. OAG stands ready to work with the

Committee, our public safety partners, and community stakeholders to ensure that our gun laws reflect the will of District residents. I am happy to answer any questions that members may have regarding the current state of the District's gun laws.

THE
PUBLIC
DEFENDER
SERVICE
for the District of Columbia



COMMENTS OF THE PUBLIC DEFENDER SERVICE
FOR THE DISTRICT OF COLUMBIA

concerning

Possession of Firearms and Ammunition Penalties Act of 2017, Bill 22-0193
Temporary Protection Order Firearm Relinquishment Act of 2017, Bill 22-0193
Extreme Risk Civil Protection Order Amendment Act of 2017, Bill 22-0400

Presented by

Katerina Semyonova

before

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Charles Allen

March 22, 2018

Avis E. Buchanan, Director
Public Defender Service
633 Indiana Avenue, N.W.
Washington, D.C. 20004
(202) 628-1200

Thank you for the opportunity to testify on the three bills before the Council today: the Possession of Firearms and Ammunition Penalties Act of 2017 (Bill 22-0588), the Temporary Protection Order Firearm Relinquishment Act of 2017 (Bill 22-0193), and the Extreme Risk Civil Protection Order Amendment Act of 2017 (Bill 22-0400). I am Katerina Semyonova, Special Counsel on Policy and Legislation to the Director at the Public Defender Service for the District of Columbia. I will first address Bill 22-0588.

Bill 22-0588

PDS objects to Bill 22-0588 because it increases punishment and duplicates offense liability in the already highly criminalized area of gun and ammunition possession. Rather than taking forward-thinking and community building steps to decrease gun possession, Bill 22-0588 adds to the mass of confusing and overlapping statutes in the D.C. Code. Bill 22-0588 neglects to define colloquial terms and creates unnecessary overlap in our criminal laws by adding duplicative offenses and increasing sentences for conduct that is already amply criminalized. Rather than duplicating existing criminal offenses and increasing incarceration, the Council should focus on community-based violence interruption strategies, such as the NEAR Act¹, that address root causes of violence and enhance neighborhood safety. Adding more crimes and more potential for incarceration is a step backward from evidence-based public health strategies long advocated by the Centers for Disease Control and the World Health Organization.²

Bill 22-0588 criminalizes the possession and sale of “stolen” firearms and “stolen” ammunition when the individual “know[s] or [has] reasonable cause to believe that the ammunition or firearm was stolen.” The fact that a firearm or ammunition at some point may

¹ D.C. Law 21-125, effective June 30, 2016.

² See: https://www.cdc.gov/violenceprevention/pdf/Strategic_Vision.pdf, http://www.who.int/violenceprevention/approach/public_health/en.

have been stolen does not make the possession of that firearm or that ammunition any more dangerous than the possession of a firearm that was legally purchased in another state or acquired through an unregulated peer to peer transaction. Because it is the potential use and lethality of a firearm that makes it dangerous, and not its ownership history, it makes little sense to create this new offense.

This proposed new offense also presents problems of proof and therefore would either not be charged by prosecutors or could be charged in such a fashion that it would lead to arbitrary enforcement. It is not clear how an individual would have cause to believe that a firearm is stolen, given that informal gun sales are legal in many states, that by some estimates there are 300 million firearms in circulation in the United States³, that firearms often cross state lines, and that firearms are often not associated with sale documents because such documents are not required for all sales. While some firearms may be reported stolen to the Bureau of Alcohol, Firearms, Tobacco, and Explosives (ATF) and logged in a database, there is no reason to believe that individuals would have direct knowledge of any prior theft, or that prosecutors could find proof of any direct knowledge. Where proof of knowledge does exist, it would typically be in instances where the individual himself participated in a burglary that resulted in the acquisition of a firearm and other crimes can and should be charged. Criminal prosecutions should focus on the core offenses of unlawful possession of a firearm, not on the irrelevant and hard to prove fact of whether a firearm had at some point been stolen.

The provisions of Bill 22-0588 that punish the possession of firearms with obliterated serial numbers, the possession of large capacity ammunition feeding devices, and the unauthorized sale of firearms are already amply covered in the D.C. Code. Bill 22-0588 does not

³ See <https://www.npr.org/2016/01/05/462017461/guns-in-america-by-the-numbers>.

repeal any overlapping provisions in Titles 7 and 45 of the D.C. Code, it fails to define necessary terms, and the Bill runs squarely against the modernization of the criminal code by the Criminal Code Reform Commission (CCRC), a project that has been supported by both the Council and the Mayor. Bill 22-0588 fails to meet the standards of D.C. Code § 3-152 which tasked the CCRC with among other things, reducing the unnecessary overlap between criminal offenses.⁴

The District already has the tools to prosecute firearms offenses as serious felonies and successfully uses those tools. Under current District law, carrying a pistol without a license is a 5 year felony.⁵ Possession of a firearm by someone previously convicted of a felony is punishable by a maximum term of 10 or 15 years depending on the prior felony and a mandatory minimum term of 1 or 3 years depending on the prior felony.⁶ Possession of a firearm after conviction of a misdemeanor intrafamily offense is a felony punishable by a maximum term of 10 years and a minimum term of 2 years.⁷ The possession of an unregistered firearm or unregistered ammunition can each be punished by a year in prison.⁸ The District also punishes the possession of a firearm during any crimes of violence or dangerous crimes such assault, robbery, carjacking, and drug distribution with a mandatory minimum sentence of 5 years of incarceration and a maximum 15 years of incarceration that can be imposed in addition to any sentence on the

⁴ D.C. Code § 3-152, recommendations for comprehensive criminal code reform, provides that the CCRC, shall submit to the Mayor and the Council comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes to: (1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (4) Reduce unnecessary overlap and gaps between criminal offenses; (5) Eliminate archaic and unused offenses; (6) Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties; (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment; (10) Propose such other amendments as the Commission believes are necessary; and (11) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

⁵ D.C. Code § 22-4505.

⁶ D.C. Code § 22-4503(a)(1) and (b)(1).

⁷ D.C. Code § 22-4503(a)(6) and (c).

⁸ D.C. Code § 7-2502.01 and D.C. Code § 7-2507.06 (penalties).

underlying offense.⁹ The District allows a 30 year maximum sentence for dangerous and violent crimes committed while armed with a firearm, and imposes a 5 year mandatory minimum sentence for a first conviction and a 10 year mandatory minimum for a subsequent conviction for a while armed offense.¹⁰

In short, there are no gaps in the District's ability to prosecute the possession of firearms and to fully prosecute offenses committed with firearms. Logically, the lead charge in firearm possession prosecutions and the most dangerous conduct is the possession of the firearm, not the isolated possession of ammunition or the fact that a firearm may be missing its serial number or could have been stolen in the past. Law enforcement does not need the tools of additional weapons offenses or additional incarceration for ancillary offenses, such as possession of stolen firearms, to send individuals who possess firearms to prison for a long time. The District already does this.

In limited circumstances, for instance, when an individual possesses only a large capacity ammunition feeding device, meaning a clip that holds more than 10 cartridges, and not a firearm, Bill 22-0588 subjects that individual to substantially more punishment and to the stigma and collateral consequences of a felony conviction. There is little public policy justification for the increased punishment in such circumstances where the prosecution has not charged or proved that the individual possessed a firearm. As found by the D.C. Circuit in *Heller v. District of Columbia*, clips that hold more than ten cartridges are exceedingly common in the United States: in 1994, 18 percent of all firearms owned by civilians were equipped with magazines holding more than 10 rounds.¹¹ Making the possession of the magazine, without any firearm, punishable

⁹ D.C. Code § 22-4504(b).

¹⁰ D.C. Code § 22-4502(a)(1)-(2).

¹¹ *Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011).

as a felony with a minimum sentence of two years does not increase public safety and focuses on the wrong conduct.

Bill 22-0588 also repeals D.C. Code § 7-2507.06 (a)(2)(B) which makes a second offense for possession of an unregistered firearm a one year misdemeanor instead of a five year felony when the individual possesses the firearm in his home and the firearm could be lawfully registered.¹² It makes sense to retain this misdemeanor exception for District residents in situations that are at the heart of Second Amendment rights -- the possession of firearms inside the home.¹³ This exception prevents District residents from being charged with felony offenses, and facing all of the burdens of a felony prosecution, when they could otherwise lawfully possess a pistol inside their homes. Further, felony convictions following Bill 22-0588 would be vulnerable to legal challenge since for much of its history, the District had an unconstitutional licensing and registration scheme that impeded lawful registration and caused convictions for unregistered firearms.¹⁴

Bill 22-0855 also has implications for home rule. Bill 22-0855 creates new felony offenses that cannot be prosecuted by the Office of the Attorney General.¹⁵ By replacing misdemeanor offenses with felonies that can only be prosecuted by the Office of the United States Attorney, the Council is stripping the Office of the Attorney General of its authority to prosecute those offenses and to guide appropriate outcomes through charging decisions and plea

¹² D.C. Code § 7-2507.06(a)(1).

¹³ *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008) ("Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home the most preferred firearm in the nation to 'keep' and use for protection of one's home and family would fail constitutional muster.")

¹⁴ *Id.*

¹⁵ D.C. Code § 23-101, provides that prosecutions for the violation of penal statutes in the nature of police or municipal regulations where the maximum punishment is fine only or imprisonment not exceeding one year shall be in the name of the District of Columbia; all other criminal prosecutions shall be conducted in the name of the United States by the U.S. Attorney for the District of Columbia.

offers informed by the policy choices of the District's elected leaders.

In the overwhelming majority of cases, firearm possession will be prosecuted as a felony offense, often with a mandatory minimum prison sentence imposed, and a period of supervised release to follow the individual's release from prison.¹⁶ Nonetheless, it makes sense to retain the discretion to charge some offenses as misdemeanors and thereby limit the collateral consequences in education, housing, and employment for District residents who without acting violently towards any other person, committed an act that is lawful in most other jurisdictions in the country and that may be protected by the Second Amendment. To saddle those District residents, who have not committed a crime against any other individual, and have merely possessed firearms or ammunition to greater punishment in all circumstances, does not enhance public safety or remove firearms from individuals who should not possess them.

Bill 22-0193

I would also like to address Bill 22-0193, the Temporary Protection Order Firearm Relinquishment Act of 2017. Bill 22-0193 would explicitly allow judges hearing petitions for temporary protection orders (TPOs) to order that respondents relinquish all firearms in their possession. Petitions for TPOs are considered in ex parte hearings, meaning hearings where only one side, the petitioner, is present. The respondent has no notice of the TPO hearing, no right to appear, and no right to challenge the veracity of the claims presented by the petitioner.¹⁷ To grant a TPO, the judge need only find that "the safety or welfare of the petitioner or a household

¹⁶ An individual sentenced to 18 months of incarceration for possession of a firearm after a prior felony conviction would, pursuant to D.C. Code §24-403.01, also be sentenced to three years of supervised release. Supervised release typically includes requirements regarding drug testing, employment, and supervision by an officer with the Court Services and Offender Supervision Agency. Violation of supervised release would subject the individual to an additional 2 years of incarceration.

¹⁷ D.C. Code § 16-1004.

member is immediately endangered by the respondent.”¹⁸ There is no statutorily prescribed standard of proof or required findings regarding the credibility of the petitioner. Given the minimal process and the low legal standard required to grant a TPO, it is not clear that orders to relinquish firearms based on the District’s ex parte TPO statute would survive a Second Amendment challenge. Similar statutes in other jurisdictions styled as gun violence restraining orders have significant additional due process protections prior to any orders to relinquish firearms.¹⁹

PDS’s principal objection to Bill 22-0193 is that the Bill expands the District’s unauthorized possession of firearms statute²⁰ by making it illegal, and a felony, to possess a firearm after a judge signs an order to relinquish firearms at an ex parte TPO hearing. Since TPOs are by definition done through an ex parte process and without notice to the respondent, Bill 22-0193 criminalizes conduct that is potentially protected by the Second Amendment and that an individual would have no reason to believe is against the law.²¹ Redrafting Bill 22-0193 to have criminal liability begin at the time a respondent is served with an order to relinquish firearms would not alleviate the due process problems with this bill. There is no reason to believe that a non-lawyer, after a brief interaction with a police officer who serves him a document would understand that his otherwise lawful, even constitutionally protected, possession of a firearm can now land him in prison.

The current unlawful possession of a firearm statute avoids this exact problem – depriving unrepresented individuals of constitutional rights by decree – by punishing the

¹⁸ D.C. Code § 16-1004(b)(1).

¹⁹ See Connecticut General Statutes, § 29-38c, Seizure of firearms and ammunition from person posing risk of imminent personal injury to self or others; California Penal Code § 18150.

²⁰ D.C. Code § 22-4503(5)(A).

²¹ See *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008).

possession of a firearm after an order to relinquish issued through a CPO, not a TPO, and only when the person had an opportunity to participate in the CPO hearing or received actual notice of the hearing and failed to appear for the hearing.²² It makes sense to limit prosecutions under this section to instances when an individual had an understanding of the order to relinquish, or failed to appear at a CPO hearing after receiving notice, because of the more severe punishment for violation of this law, which requires a minimum 2 year sentence and allows for a maximum 10 year sentence. The current law, D.C. Code § 22-4503, mirrors a federal provision, 18 U.S.C. § 922(g)(8).²³ The restrictions on firearm possession in 18 U.S.C. § 922(g)(8) have repeatedly withstood constitutional scrutiny in part because of the due process protections provided at a hearing on the civil protection order. For instance, in *United States v. Mahin*, the Court of Appeals for the Fourth Circuit upheld section 922(g)(8)'s prohibition on weapon possession and noted that the statute's prohibitions applied only to individuals who had the opportunity to participate in a hearing on the protective order and that the procedural due process requirements made up a significant narrowing feature of the statute.²⁴ The Supreme Court has also held that "at a minimum [the Due Process Clause] require[s] that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."²⁵ Bill 22-0193, would eliminate these narrowing features and would sweep away due process protections, making it both unfair from a policy perspective and vulnerable to constitutional challenge.

²² D.C. Code § 22-4503.

²³ 18 U.S. C. § 922(g)(8).

²⁴ *United States v. Mahin*, 668 F.3d 119, 125 (4th Cir. 2012).

²⁵ *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). *United States v. Chapman*, 666 F.3d 220 (4th Cir. 2012) held that it was "of critical importance to our reasonable fit analysis" that section 922(g)(8) kept its prohibitory sweep exceedingly narrow by limiting the time period of the restriction and satisfying the fundamental requirements of procedural due process.

Bill 22-0400

Bill 22-0400, the Extreme Risk Civil Protection Order Amendment Act of 2017, provides some measure of procedural protections for respondents subject to an order to relinquish firearms. However, the Bill also allows the court to issue a search warrant based on a finding that a petitioner, who could be anyone, has proven by a preponderance of the evidence that the respondent failed to surrender firearms or ammunition. The warrant would authorize law enforcement to search locations where the firearms or ammunition alleged to belong to the respondent are reasonably believed to be and to seize any firearms or ammunition discovered pursuant to such search.²⁶ The search warrant provision in Bill 22-0400 plainly violates the Fourth Amendment. The Fourth Amendment reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The search warrant provision in Bill 22-0400 does not require that any testimony related to the search warrant be taken under oath or affirmation. In addition, by allowing anyone to petition for a search warrant, Bill 22-0400 conflicts with Superior Court Rule of Criminal Procedure 41, which permits search warrants only "upon application of a law enforcement officer or attorney for the government." While the statements of private citizens can make up part of an application for a search warrant, private citizens, who have no experience in the law and no professional ethical obligations, should not be in the business of seeking search warrants against other private citizens, particularly where the "the physical entry of the home is the chief evil against which the

²⁶ Bill 22-0400 Section 905(d).

wording of the Fourth Amendment is directed.”²⁷ There is no other law that permits a private citizen, without resort to law enforcement or prosecutors, to seek the search of the house of another. The potential for abuse in these circumstances is simply too great, in part because a judge hearing these applications is not in any position to investigate the claims or credibility of the petitioner. Finally, as a policy matter, if the Council wants to encourage petitioners to come forward about individuals, including children, spouses, or former romantic partners, for whom firearm possession is no longer safe, it should fashion an immunity provision that protects other residents of the home from prosecution for contraband that could be discovered in a search. Individuals will have little reason to come forward and seek the assistance of law enforcement in removing firearms from the home if every resident is then subject to the invasion of privacy of a search and prosecution for non-target offenses ranging from cocaine possession to theft that may be incidentally discovered during a search of the home.

Thank you for the opportunity to present this testimony. As always, PDS is available to the Council for further questions and concerns regarding these bills.

²⁷ *Oliver v. United States*, 656 A.2d 1159, 1164 (D.C.1995).